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# Datasheet for the decision of 14 June 2012

**Case Number:** T 0441/10 - 3.2.06

**Application Number:** 00310574.9

**Publication Number:** 1106150

**IPC:** A61F13/15

**Language of the proceedings:** EN

**Title of invention:**
Disposable diaper

**Patentee:**
UNI-CHARM CORPORATION

**Opponents:**
KIMBERLY-CLARK WORLDWIDE, INC.
Paul Hartmann AG

**Relevant legal provisions:**
EPC Art. 123(2)
RPBA Art. 13(1), Art. 13(3)

**Keyword:**
Auxiliary request 1 - not admissible
Main request and auxiliary requests 3 and 4: amendments - allowable (no)

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European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

**Case Number: T 0441/10 - 3.2.06**

# D E C I S I O N
# of the Technical Board of Appeal 3.2.06
# of 14 June 2012

| | |
|---|---|
| **Appellant:** (Patent Proprietor) | UNI-CHARM CORPORATION<br>182 Shimobun,<br>Kinsei-cho<br>Shikokuchuo-shi,<br>Ehime-ken (JP) |
| **Representative:** | Sperling, Rüdiger<br>Staeger & Sperling<br>Partnerschaftsgesellschaft<br>Sonnenstrasse 19<br>80331 München (DE) |
| **Respondent I:** (Opponent 1) | KIMBERLY-CLARK WORLDWIDE, INC.<br>401 North Lake Street<br>Neenah WI54956 (US) |
| **Representative:** | Davies, Christopher Robert<br>Dehns<br>St Bride's House<br>10 Salisbury Square<br>London<br>EC4Y 8JD (GB) |
| **Respondent II:** (Opponent 2) | Paul Hartmann AG<br>Paul-Hartmann-Strasse 12<br>89522 Heidenheim (DE) |
| **Representative:** | Friz, Oliver<br>Dreiss Patentanwälte<br>Postfach 10 37 62<br>70032 Stuttgart (DE) |
| **Decision under appeal:** | **Decision of the Opposition Division of the European Patent Office posted 18 December 2009 revoking European patent No. 1106150 pursuant to Article 101(3)(b) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman:** | M. Harrison |
| **Members:** | G. de Crignis |
| | K. Garnett |

## Summary of Facts and Submissions

I. European patent No. 1 106 150 was revoked by the opposition division by way of its decision posted on 18 December 2009.

II. The opposition division held that the subject-matter of claim 1 of the main request and of auxiliary request 1 included an unallowable intermediate generalisation and thus contained subject-matter which extended beyond the content of the application as originally filed (Article 123(2) EPC). Concerning the second auxiliary request, the opposition division found that the requirements of Article 83 EPC were not met in relation to a stiffness parameter.

III. The appellant (patent proprietor) filed an appeal against this decision and with its grounds of appeal of 26 April 2010 it filed a main request and four auxiliary requests.

Claim 1 of the main request reads:

"A disposable diaper having a transverse direction extending circumferentially around a wearer's torso and a longitudinal direction orthogonal to said transverse direction, comprising a liquid-pervious topsheet (2), a liquid-impervious backsheet (3), a liquid-absorbent core (4) disposed therebetween and a pair of gasketing cuffs (13) lying outside transversely opposite side edges of said core extending in said longitudinal direction and having elastic stretchability in said longitudinal direction, each said gasketing cuff being formed at least partially by said liquid-impervious backsheet (3) extending laterally from said side edges of said core, and at least one separate sheet (26)

laminated with said liquid-impervious sheet and provided with said elastic stretchability by securing a leg-hole elastic member (18) extending in the longitudinal direction to said gasketing cuff (13) along a line spaced from the associated side edge of said core;

**characterized in that**

- said topsheet (2) extends in said transverse direction, at least in a longitudinal middle region of said diaper, into a portion of said gasketing cuff defined between said side edge (23) of said core (4) and said elastic member, the edge of said topsheet defining a boundary dividing the gasketing cuff, at least in a longitudinal middle region of said diaper, into a high stiffness zone (42) and a low stiffness zone so that said high stiffness zone (42), comprising said topsheet (2), lies adjacent said core and said low stiffness zone lies adjacent said elastic member, wherein said high stiffness zone, comprising said topsheet, has a transverse dimension of between 10 and 50 mm,
- wherein said diaper (1) is formed on a distal side thereof with a pair of barrier cuffs (14) each formed by the liquid-impervious sheet (26) and having a top side edge having an elastic stretchability in said longitudinal direction and a proximal side edge (28) integral with said top surface of said diaper so that said distal side edge (29) can swing up from said top surface of said diaper as said diaper is longitudinally curved,
- wherein said proximal side edge (28) lies between the associated side edge (23) of said core (4) and said elastic member (18) at least in said longitudinally middle region of said gasketing cuff and wherein said gasketing cuff is divided between said proximal side

edge portion (28) and said elastic member (18) into said high stiffness zone and said low stiffness zone."

IV. When issuing a summons to oral proceedings, the Board indicated in its annexed communication that none of the requests appeared allowable *inter alia* since the requirements of Article 123(2) EPC and/or Article 84 EPC did not appear to be fulfilled by claim 1 of the main request or the first to third auxiliary requests, and that the invention defined in the fourth auxiliary request appeared to be insufficiently disclosed (Article 83 EPC).

V. Oral proceedings were held on 14 June 2012.

The appellant replaced its previous set of requests and requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed with the statement of grounds of appeal on 26 April 2010, alternatively on the basis of the first auxiliary request filed during the oral proceedings, alternatively on the basis of the third or fourth auxiliary requests filed with the said statement of grounds of appeal.

The respondents requested that the appeal be dismissed.

VI. Claim 1 of the first auxiliary request (auxiliary request 1) reads:

"A disposable diaper having a transverse direction extending circumferentially around a wearer's torso and a longitudinal direction orthogonal to said transverse direction, comprising a liquid-pervious topsheet (2), a liquid-impervious backsheet (3), a liquid-absorbent core (4) disposed therebetween and a pair of gasketing

cuffs (13) lying outside transversely opposite side edges of said core extending in said longitudinal direction and having elastic stretchability in said longitudinal direction, each gasketing cuff has a laminated construction and is formed at least partially by said liquid-impervious backsheet (3) extending laterally from said side edges of said core, and at least one separate sheet (26) laminated with said liquid-impervious sheet and provided with said elastic stretchability by securing a leg-hole elastic member (18), which comprises three elastic elements (E1, E2, E3) from which the elastic element (E1) is the innermost, extending in the longitudinal direction to said gasketing cuff (13) along a line spaced from the associated side edge of said core;
- wherein said topsheet (2) extends in said transverse direction, at least in a longitudinal middle region of said diaper, into a portion of said gasketing cuff defined between said side edge (23) of said core (4) and said elastic member, whereas the top- and backsheets (2, 3) extend outward beyond the transversely opposite side edges (23) placed upon and bonded to each other along the respective extensions by means of hot melt adhesive (10) and the backsheet (3) extends further outward beyond the topsheet (2) to respective side edges (24) of the horizontal gasketing cuff (13), the edge of said topsheet defining a boundary dividing the gasketing cuff, at least in a longitudinal middle region of said diaper, into a second zone (42) and a low stiffness zone so that said second zone (42), comprising said topsheet (2), lies adjacent said core and said low stiffness zone lies adjacent said elastic member, wherein said second zone, comprising said topsheet, has a transverse dimension q of between 10 and 50 mm,

- wherein the gasketing cuff (13) comprises, in the vicinity of a center line II-II, a first zone (41) in which the backsheet (3) and the liquid-impervious sheet (26) are placed upon and bonded to each other including the elastic member (18) therebetween and having a relatively low bending stiffness in the transverse direction, said second zone (42) in which the top- and backsheets (2, 3) and the liquid-impervious sheet (26) are placed upon and bonded one to another and having a relatively high bending stiffness in the transverse direction and a third zone (43) defined between the side edge of the core (4) and the proximal side edge (28) of the barrier cuff (14), in which the top- and backsheets (2, 3) are placed upon and bonded to each other,
- the first zone (41) and the second zone (42) are contiguous to each other along a straight line M while the second zone (42) and the third zone (43) are contiguous to each other along a straight line N,
- wherein the number of sheets laminated one upon another is different in the respective zones (41, 42, 43),
- the first, second and third zones (41, 42, 43) respectively have their transverse dimensions (p, q, r) wherein p has a transverse dimension between 5-100 mm and r has a transverse dimension between 0-30 mm, a distance D from the innermost leg-hole elastic member E1 to the border line M of the second zone (42) is in a range of 1-10 mm,
- wherein the first zone (41) has a stiffness G1, the second zone (42) has a stiffness G2 and the stiffness G2 is higher than the stiffness G1,
- wherein said diaper (1) is formed on a distal side thereof with a pair of barrier cuffs (14) each formed by the liquid-impervious sheet (26) and having a top side edge having an elastic stretchability in said

longitudinal direction and a proximal side edge (28) integral with said top surface of said diaper so that said distal side edge (29) can swing up form said top surface of said diaper as said diaper is longitudinally curved,
- wherein said proximal side edge (28) lies between the associated side edge (23) of said core (4) and said elastic member (18) at least in said longitudinally middle region of said gasketing cuff and wherein said gasketing cuff is divided between said proximal side edge portion (28) and said elastic member (18) into said high stiffness zone and said low stiffness zone."

Claim 1 of the third auxiliary request filed with the statement of grounds of appeal reads as follows:

"A disposable diaper having a transverse direction extending circumferentially around a wearer's torso and a longitudinal direction orthogonal to said transverse direction, comprising a liquid-pervious topsheet (2), a liquid-impervious backsheet (3), a liquid-absorbent core (4) disposed therebetween and a pair of gasketing cuffs (13) lying outside transversely opposite side edges of said core extending in said longitudinal direction and having elastic stretchability in said longitudinal direction, each said gasketing cuff has a laminated construction and is formed at least partially by said liquid-impervious backsheet (3) extending laterally from said side edges of said core, and at least one separate sheet (26) laminated with said liquid-impervious sheet and provided with said elastic stretchability by securing a leg-hole elastic member (18) which comprises three elastic elements (E1, E2, E3) from which the elastic element (E1) is the innermost, extending in the longitudinal direction to

said gasketing cuff (13) along a line spaced from the associated side edge of said core;
- wherein said topsheet (2) extends in said transverse direction, at least in a longitudinal middle region of said diaper, into a portion of said gasketing cuff defined between said side edge (23) of said core (4) and said elastic member, whereas the top- and backsheets (2, 3) extend outward beyond the transversely opposite side edges (23) placed upon and bonded to each other along the respective extensions by means of hot melt adhesive (10) and the backsheet (3) extends further outward beyond the topsheet (2) to respective side edges (24) of the horizontal gasketing cuff (13), the edge of said topsheet defining a boundary dividing the gasketing cuff, at least in a longitudinal middle region of said diaper, into a high stiffness zone (42) and a low stiffness zone so that said high stiffness zone (42), comprising said topsheet (2), lies adjacent said core and said low stiffness zone lies adjacent said elastic member, wherein said high stiffness zone, comprising said topsheet, has a transverse dimension q of between 10 and 50 mm,
- wherein the gasketing cuff (13) comprises, in the vicinity of a center line II-II, a first zone (41) in which the backsheet (3) and the liquid-impervious sheet (26) are placed upon and bonded to each other including the elastic member (18) therebetween and having a relatively low bending stiffness in the transverse direction, a second zone (42) in which the top- and backsheets (2, 3) and the liquid-impervious sheet (26) are placed upon and bonded one to another and having a relatively high bending stiffness in the transverse direction and a third zone (43) defined between the side edge of the core (4) and the proximal side edge (28) of the barrier cuff (14), in which the top- and

backsheets (2, 3) are placed upon and bonded to each other,
- the first zone (41) and the second zone (42) are contiguous to each other along a straight line M while the second zone (42) and the third zone (43) are contiguous to each other along a straight line N,
- the first, second and third zones (41, 42, 43) respectively have their transverse dimensions (p, q, r) wherein p has a transverse dimension between 5 - 100 mm, q has a transverse dimension between 10 - 50 mm and r has a transverse dimension between 0 - 30 mm, a distance D from the innermost leg-hole elastic member E1 to the border line M of the second zone (42) is in a range of 1 - 10 mm,
- wherein the first zone 41 has a stiffness G1, the second zone 42 has a stiffness G2 and the stiffness G2 is higher than the stiffness G1,
- wherein said diaper (1) is formed on a distal side thereof with a pair of barrier cuffs (14) each formed by the liquid-impervious sheet (26) and having a top side edge having an elastic stretchability in said longitudinal direction and a proximal side edge (28) integral with said top surface of said diaper so that said distal side edge (29) can swing up from said top surface of said diaper as said diaper is longitudinally curved,
- wherein said proximal side edge (28) lies between the associated side edge (23) of said core (4) and said elastic member (18) at least in said longitudinally middle region of said gasketing cuff and wherein said gasketing cuff is divided between said proximal side edge portion (28) and said elastic member (18) into said high stiffness zone and said low stiffness zone."

Claim 1 of the fourth auxiliary request reads as follows:

"A disposable diaper having a transverse direction extending circumferentially around a wearer's torso and a longitudinal direction orthogonal to said transverse direction, comprising a liquid-pervious topsheet (2), a liquid-impervious backsheet (3), a liquid-absorbent core (4) disposed therebetween and a pair of gasketing cuffs (13) lying outside transversely opposite side edges of said core extending in said longitudinal direction and having elastic stretchability in said longitudinal direction, each said gasketing cuff has a laminated construction and is formed at least partially by said liquid-impervious backsheet (3) extending laterally from said side edges of said core, and at least one separate sheet (26) laminated with said liquid-impervious sheet and provided with said elastic stretchability by securing a leg-hole elastic member (18) which comprises three elastic elements (E1, E2, E3) from which the elastic element (E1) is the innermost, extending in the longitudinal direction to said gasketing cuff (13) along a line spaced from the associated side edge of said core;
- wherein said topsheet (2) extends in said transverse direction, at least in a longitudinal middle region of said diaper, into a portion of said gasketing cuff defined between said side edge (23) of said core (4) and said elastic member, whereas the top- and backsheets (2, 3) extend outward beyond the transversely opposite side edges (23) placed upon and bonded to each other along the respective extensions by means of hot melt adhesive (10) and the backsheet (3) extends further outward beyond the topsheet (2) to respective side edges (24) of the horizontal gasketing cuff (13), the edge of said topsheet defining a boundary dividing the gasketing cuff, at least in a longitudinal middle region of said diaper, into a high

stiffness zone (42) and a low stiffness zone so that said high stiffness zone (42), comprising said topsheet (2), lies adjacent said core and said low stiffness zone lies adjacent said elastic member, wherein said high stiffness zone, comprising said topsheet, has a transverse dimension of between 10 and 50 mm,
- wherein the gasketing cuff (13) comprises, in the vicinity of a center line II-II, a first zone (41) in which the backsheet (3) and the liquid-impervious sheet (26) are placed upon and bonded to each other including the elastic member (18) therebetween and having a relatively low bending stiffness in the transverse direction, a second zone (42) in which the top- and backsheets (2, 3) and the liquid-impervious sheet (26) are placed upon and bonded one to another and having a relatively high bending stiffness in the transverse direction and a third zone (43) defined between the side edge of the core (4) and the proximal side edge (28) of the barrier cuff (14), in which the top- and backsheets (2, 3) are placed upon and bonded to each other,
- the first zone (41) and the second zone (42) are contiguous to each other along a straight line M while the second zone (42) and the third zone (43) are contiguous to each other along a straight line N,
- the first, second and third zones (41, 42, 43) respectively have their transverse dimensions (p, q, r) wherein p = 5 - 100 mm, q = 10 - 50 mm and r = 0 - 30 mm, a distance D from the innermost leg-hole elastic member E1 to the border line M of the second zone (42) is 1 - 10 mm,
- the stiffness of the first, second and third zones (41, 42, 43) are measured by Clark method wherein the first zone 41 has a stiffness G1 in a range of 50 - 100 mm, the second zone 42 has a stiffness G2 in a range of

100 - 250 mm and the stiffness G2 is at least 30 mm higher than the stiffness G1,
- wherein said diaper (1) is formed on a distal side thereof with a pair of barrier cuffs (14) each formed by the liquid-impervious sheet (26) and having a top side edge having an elastic stretchability in said longitudinal direction and a proximal side edge (28) integral with said top surface of said diaper so that said distal side edge (29) can swing up from said top surface of said diaper as said diaper is longitudinally curved,
- wherein said proximal side edge (28) lies between the associated side edge (23) of said core (4) and said elastic member (18) at least in said longitudinally middle region of said gasketing cuff and wherein said gasketing cuff is divided between said proximal side edge portion (28) and said elastic member (18) into said high stiffness zone and said low stiffness zone."

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

The requirement of Article 123(2) EPC was met. The high and low stiffness zones of claim 1 should not be confused with the first and second zones of the embodiment in Figure 2. Whilst the high stiffness zone corresponded to the second zone 42, the low stiffness zone did not correspond to the first zone 41. Such correspondence of the high stiffness zone was disclosed in originally filed claims 1 and 3 which required the high stiffness zone to include the topsheet, the backsheet and the separate sheet and, accordingly, the number of layers defined the zone as well as its extension from the side edge of the topsheet to the elastic member. The elastic member included elastic elements E1, E2 and E3 (as disclosed in the

description, paragraph 0011). Hence, the equivalence of the high stiffness zone and the second zone was originally disclosed in this regard.

The description made clear that, for the inventive concept, only the high stiffness zone was important and that the extensions of the low stiffness zone or of the third zone were unimportant. Therefore, it was not necessary to include ranges for their extension (denoted p and r), and for the same reasons it was not necessary to include stiffness values related to these zones into claim 1.

With regard to auxiliary request 1, this should be admitted into the proceedings. The equivalence of the second zone and the high stiffness zone had not been an issue in the written proceedings and, accordingly, this request was a reaction to the arguments made for the first time in oral proceedings. Its claim 1 defined the transverse dimensions of the first, second and third zones and relative stiffness of the first and second zone and additionally specified the number of sheets being different in the first, second and third zones. The scope of protection of claim 1 was more limited than that of claim 1 as granted since it was restricted to the embodiment shown in Figure 2 - and, accordingly, the requirements of Articles 123(2) and (3) EPC were met.

Concerning claim 1 of the third and fourth auxiliary requests, the above arguments applied equally.

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

Claim 1 of the main request did not meet the requirement of Article 123(2) EPC. From the description as originally filed and the wording of the claim, the first or second zones - disclosed for the embodiment illustrated in Figure 2 - were not disclosed as being equivalent to the high or low stiffness zones and no correlation of the zones was disclosed. Further, even the definition of the low stiffness and high stiffness zones per se had been altered from those as originally filed without there being any basis for such alteration. Additionally, there was no disclosure for separately singling out a value disclosed for the transverse dimension of the second zone, let alone ascribing this value to the "high stiffness zone". Accordingly, none of the requests was allowable.

For claim 1 of the first auxiliary request, the scope of protection had been broadened, contrary to Article 123(3) EPC. At very best it could not be ruled out that an extension had occurred, since there was no disclosure which enabled the skilled person to recognize the extent to which the second zone might be consistent with any particular part of the high stiffness zone. The consideration of these matters illustrated that there was no clear and unambiguous disclosure for the second zone constituting the high stiffness zone, so that the first auxiliary request should not be admitted into proceedings.

## Reasons for the Decision

1. Main request

The feature of claim 1 concerning the high stiffness zone having a transverse dimension of between 10 and 50

mm results in claim 1 defining subject-matter which does not meet the requirement of Article 123(2) EPC.

1.1 "High stiffness zone" is not equivalent to "second zone".

The application as filed (as well as the published patent specification) distinguishes on the one hand between a high stiffness zone (in contrast to a low stiffness zone) and the second zone (in addition to first and third zones). There is no link disclosed which equates the high stiffness zone with the second zone.

1.1.1 Figure 2 embodiment and its description

First, second and third zones are disclosed for the embodiment shown in Figure 2. As illustrated in this Figure and as stated in the description as originally filed (page 7, third paragraph to page 9, first paragraph, identical to paragraph [0011] of the A-publication and to paragraph [0013] of the B-publication), the first zone extends from the edge of the topsheet (denoted by line M in Figure 2) to the end edge of the gasketing cuff (thus including the elastic elements E1, E2 and E3), the second zone from the edge of the topsheet (line M in Figure 2) to the proximal side edge (28) of the barrier cuff (denoted by line N in Figure 2), and the third zone from the proximal side edge (28) to the end edge of the absorbent core (23). No high stiffness zone or low stiffness zone is mentioned in this regard, albeit that the description does disclose relative stiffness of the zones such as a stiffness G1 in a range of 50 – 100 mm for the first zone, a stiffness G2 in a range of 100 – 250 mm for the second zone and the stiffness G2 being at least 30 mm

higher than G1 (all as measured by the Clark method described in JIS L-1096).

1.1.2 Claim 1 on this issue

The high stiffness zone specified in claim 1 (main request) relates to claims 1 and 3 as originally filed, and states that:

"- the edge of said topsheet defining a boundary dividing the gasketing cuff, ..., into a high stiffness zone (42) and a low stiffness zone, so that said high stiffness zone (42), comprising said topsheet (2), lies adjacent said core and said low stiffness zone lies adjacent said elastic member,
- said proximal side edge (28) lies between the associated side edge (23) of said core (4) and said elastic member (18) ... and wherein said gasketing cuff is divided between said proximal side edge portion (28) and said elastic member (18) into said high stiffness zone and said low stiffness zone."

1.1.3 Comparison between the description and claim 1

The embodiment shown in Figure 2 discloses the elastic member (three elastic elements) as being included in the first zone which has less stiffness compared to the second zone, whereas the claimed article specifies a high stiffness and a low stiffness zone excluding the elastic member. Additionally, the claim concerns only a high and a low stiffness zone, which combination of zones starts however at the side edge (23) of the core, whereas the embodiment disclosed in relation to Figure 2 concerns a second and a first zone which start at a distance from the side edge of the core, in that there

is a third zone shown and disclosed as being possible (i.e. of a length of 0 – 30 mm).

1.1.4 Conclusion

Thus, there is no disclosure which equates the high stiffness zone to the second zone of the embodiment related to the first, second and third zones.

1.2 Disclosure related to a numerical range for the transverse dimension of the second zone

The application as filed provides a clear and unambiguous disclosure (see page 8, lines 12 to 15) of a range of 10 to 50 mm for the transverse dimension of the second zone according to a particular embodiment. Since there is no disclosure that the high stiffness zone can be equated to the second zone, there is no disclosure that the high stiffness zone should have a transverse dimension of 10 to 50 mm as ascribed to the second zone in the Figure 2 embodiment.

1.3 Disclosure related to ranges for the transverse dimension in combination for the first, second and third zones

1.3.1 The ranges for the transverse dimensions p, q and r of the first, second and third zones are disclosed in combination for the embodiment disclosed in paragraph [0013] (B-publication) i.e. an embodiment corresponding to Figure 2.

1.3.2 The description of this embodiment however provides a disclosure of these ranges, albeit described as being "preferred", only in combination with one another, and anyway linked to further features, such as for example

the relationship of stiffness in these zones and the further structural feature of the number of sheets laminated one upon another being different in the first, second and third zones.

1.3.3 The ranges disclosed for the transverse dimensions p and r of the first and third zones are not included in claim 1 nor are any further features of the embodiment disclosed with regard to Figure 2 even though such features - in particular concerning the relative dimensions and the relative stiffness - are functionally and structurally related to the introduced feature. Hence, introducing a dimension of one of these zones in isolation, let alone the specific range of values associated with said zone, combined with the absence of any disclosure that the further features can be chosen independently of the other features in the embodiment, means that the claimed subject-matter extends beyond the content of the application as originally filed since an unallowable intermediate generalisation has been introduced. Thus, the requirement of Article 123(2) EPC is not met.

2. Third and fourth auxiliary requests

Claim 1 of these requests also includes the feature concerning the high stiffness zone having a transverse dimension of between 10 and 50 mm. The conclusions set out above under points 1.1 and 1.2 for the main request apply equally to the claims of these requests.

The appellant did not advance any argument in support of these requests which was different to those advanced in favour of the main request.

The third and fourth auxiliary requests are therefore also not allowable (Article 123(2) EPC).

3. Auxiliary request 1 - Article 123(2) EPC and (3) EPC

Claim 1 as granted specifies the high stiffness zone as having a transverse dimension of between 10 and 50 mm, whereas claim 1 of the first auxiliary request defines the second zone as having the same dimension. In that nothing in the application as filed specifies, unambiguously, the extent to which the second zone can be considered equivalent to the high stiffness zone, a replacement of "high stiffness zone" by "second zone" in the context of the claim of the first auxiliary request appears *prima facie* to contravene Article 123(2) EPC.

In the context of Article 123(3) EPC, it can also not be directly determined whether the replacement of "high stiffness zone" by "second zone" in combination with the remaining subject-matter of claim 1 results in the protection conferred by claim 1 being extended compared to that of claim 1 as granted, it being noted that in the last lines of the claim a "high stiffness" zone is again defined in relation to other features of the article (i.e. in addition to the second zone defined earlier in the claim).

Since claim 1 of the first auxiliary request was not therefore *prima facie* allowable at least with regard to Articles 123(2) or (3) EPC for the reasons given above, and since the request was filed for the first time during oral proceedings (i.e. at a very late stage of the proceedings) and raising matters of considerable complexity, the Board exercised its discretion under

Articles 13(1) and (3) RPBA not to admit the request into proceedings.

**Order**

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

The appeal is dismissed.

The Registrar: The Chairman:

M. H. A. Patin M. Harrison

Decision electronically authenticated