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**Datasheet for the decision  
of 22 March 2011**

**Case Number:** T 1445/10 - 3.2.06

**Application Number:** 04814434.9

**Publication Number:** 1708664

**IPC:** A61F 13/15

**Language of the proceedings:** EN

**Title of invention:**

Article featuring an interior graphic

**Applicant:**

KIMBERLEY-CLARK WORLDWIDE, INC.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 54, 56

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

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**Keyword:**

"Inventive step - yes"

"Technical means for solution of problem - yes"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 1445/10 - 3.2.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.06  
of 22 March 2011

**Appellant:** KIMBERLY-CLARK WORLDWIDE, INC.  
401 North Lake Street  
Neenah WI 54956 (US)

**Representative:** Mabey, Katherine Frances  
Dehns  
St Bride's House  
10 Salisbury Square  
London EC4Y 8JD (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 18 January 2010  
refusing European application No. 04814434.9  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Alting van Geusau  
**Members:** G. de Crignis  
K. Garnett

## Summary of Facts and Submissions

I. By the decision posted on 18 January 2010 the Examining Division refused the European patent application No. 04814434.9 for lack of inventive step when considering documents

D1 US-A-2003/0105443

D2 US-A-2001/031954

D3 US-A-2003/073966.

The application related to an absorbent article comprising an active graphic that becomes visible or becomes significantly more visible when exposed to urine.

The Examining Division held that the subject-matter of claim 1 lacked an inventive step over D1. The claimed subject-matter did not provide a technical contribution going beyond that what was already known from D2 or D3. Placing active graphics on the interior of the absorbent article did not lead to a technical effect but rather related to a mental teaching method which could not contribute to inventive step.

II. On 18 February 2010 the appellant (applicant) filed an appeal against this decision and simultaneously paid the appeal fee. A main request and five auxiliary requests were filed on 28 May 2010 together with a statement setting out the grounds of appeal.

III. In a communication sent on 20 October 2010 as an annex to a summons to oral proceedings on 27 January 2011 the Board addressed various issues concerning clarity and consistency of the claims and the description.

Additionally, it indicated that the subject-matter of claim 1 appeared to solve the general problem of improved assistance in toilet training by technical means involving an active graphic.

- IV. With letter of 30 December 2011, the appellant filed an amended main request and correspondingly amended pages 1, 2, 4, 7 and 9 of the description.
- V. With letter of 4 February 2011, the appellant filed an amended main request and first to sixth auxiliary request as well as several amended pages of the description.
- VI. With its letter of 17 March 2011, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request, alternatively the first auxiliary request, both requests as filed with this letter. Earlier filed second to sixth auxiliary requests were maintained.
- VII. Claim 1 of the main request reads:

"A training pant (20) defining a longitudinal direction (48) and a lateral direction (49), an interior article surface (28) configured for a facing relationship with a wearer and an exterior article surface (30) opposite said interior article surface (28), said training pant comprising:

an outercover (40) defining an interior outercover surface (62), and an exterior outercover surface (64) opposite said interior outercover surface (62);  
and an absorbent body (44) disposed on said interior outercover surface (62); and

characterised in that said training pant further comprises at least one interior graphic (90) disposed on said interior article surface (28) so as to be visible from the interior article surface (28), wherein said at least one interior graphic (90) is an active graphic, the active graphic being an appearing graphic that becomes visible or becomes significantly more visible when exposed to urine, or a fading graphic that becomes invisible or significantly less visible when exposed to urine, or a combination of appearing and fading graphics."

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

Consistent with the decision of the examining division, the subject-matter of claim 1 was novel over the disclosure in D1, D2 and D3. D1 disclosed a permanent graphic disposed on the outer surface of the article. D2 as well as D3 disclosed an active graphic which should be visible from the exterior surface. Contrary thereto, the application in suit referred to an active graphic which should be visible from the interior surface.

An active graphic represented a technical feature. Hence, the objection under Article 52 EPC was not appropriate. The objective technical problem to be solved related to the provision and position of the wetness indication means. D2 as well as D3 suggested the provision of an active graphic and thus represented a suitable starting point for the assessment of inventive step. However, none of these documents suggested the provision of a visual signal which would

be noticed from the interior of the article. Hence, an inventive step should be acknowledged.

## **Reasons for the Decision**

1. The appeal is admissible.

2. *Main Request*

2.1 Amendments

The subject-matter of claim 1 is now directed to a training pant. For such an article, the problem concerning visual identification of discharge applies when training children for dryness. Although the application as filed also mentions diapers, feminine hygiene products, incontinence garments and the like (see paragraphs [0001] and [0002]), the aspect of dry training is clearly linked to training pants, something which becomes particularly clear from [0005] "there is a need for a training tool that encourages the wearer to practise pulling the article up". Accordingly, the claim is limited to the specific articles concerned. Hence, the requirements of Article 123(2) EPC are met.

The dependent claims have been amended to be consistent with the fact that claim 1 now refers to a training pant. The requirements of Articles 84 and 123(2) EPC are met in this respect as well.

## 2.2 Novelty

The subject-matter of claim 1 is novel over the disclosure in all cited documents, including D2 and D3, in view of the fact that none of these documents refers to the feature that *"said training pant further comprises at least one interior graphic (90) disposed on said interior article surface (28) so as to be visible from the interior article surface (28)"*. Hence, the requirements of Article 54 EPC are met.

## 2.3 Inventive step

2.3.1 D2 and D3 disclose absorbent articles, in particular training pants, having active graphics which are visible from the exterior of the product (D2: abstract, page 1, paragraph [0008]; page 3, paragraph [0022]; page 6, paragraphs [0074, 0075]; D3: abstract, paragraphs [0009, 0010], [0035], [0041]). The outer cover comprises a liquid-impermeable material and an active graphic is provided on an inner layer of the outer cover which reacts upon a change in a condition of the pant, such as wetness. This change informs the carer and/or the child *via* fading or appearing graphics that the pants have been exposed to an aqueous solution. Accordingly, D2 and D3 are equally qualified for representing the closest prior art.

2.3.2 The application in suit started from such knowledge and solves the problem of noticing any insult early by inspecting the pants from the inner side. This problem is solved by the provision of a training pant which notifies the wearer of any insult independently of the volume of the insult and further stimulates the child

to actively pulling the pants down to inspect the inside.

2.3.3 When starting from the disclosure of either D2 or D3, there is no suggestion or hint to such a kind of stimulation nor to the application of the active graphic in a position such that it becomes visible only from the interior surface.

2.3.4 Hence, the claimed solution of providing a visual signal which can only be seen via an internal inspection of the article is not suggested in any of the cited documents. Accordingly, the claimed subject-matter would not have been obvious for the skilled person and the requirements of Article 56 EPC are met.

#### 2.4 Technical character

2.4.1 The Examining Division considered that there were two problems relating to the feature of the active graphic being placed in the interior of the article. The first problem related to the question of small amounts of urine being sufficient to activate the graphic. The second problem related to the necessity for the wearer to inspect the pants internally in order to see the signal. The first problem was considered to be linked to an unpredictable perception of the user and thus linked to a further feature which could not be controlled. The second problem was considered to be non-technical as it related to the use of the article.

2.4.2 The Board considers both problems to be linked to the general problem of improved assistance in toilet training. Although it may be unpredictable whether or



not the individual wearer correctly uses the provided assistance, such use which is not claimed but rather an article which provides, by means of a technical feature (the active graphic disposed on an interior article surface) the possibility of such improved assistance. Hence, the application specifies an invention within the meaning of Article 52 EPC. Accordingly, it is not necessary to consider the further auxiliary requests.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of:
  - claims 1 to 15 according to the main request as filed with the letter dated 17 March 2011;
  - the description,
    - pages 1, 2, 4, 7, 9 as filed on 30 December 2010,
    - pages 18 and 20 as filed on 29 February 2008,
    - pages 3, 5, 14, 19, 23 and 26 as filed on 25 September 2007
    - pages 6, 8, 10 - 13, 15 - 17, 21, 22, 24, 25 such as originally filed;
  - Figures 1 to 5, such as originally filed.

The Registrar

The Chairman

M. Patin

P. Alting van Geusau