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Datasheet for the decision of 21 January 2014

Case Number: T 1509/10 - 3.2.06

Application Number: 01116733.5

Publication Number: 1184012

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:
Shorts type disposable diaper

Patent Proprietor:
KAO CORPORATION

Opponents:
SCA Hygiene Products AB
Paul Hartmann AG
KIMBERLY-CLARK WORLDWIDE, INC.

Relevant legal provisions:
EPC Art. 123(2), 84
RPBA Art. 13(1)

Keyword:
Main request and auxiliary requests 1 to 5: not allowable (lack of clarity, lack of disclosure)
Auxiliary request 6: not prima facie allowable; not admitted into proceedings

Decisions cited:
T 0906/97

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Case Number: T 1509/10 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 21 January 2014

Appellant: (Patent Proprietor)	KAO CORPORATION 14-10, Nihonbashi, Kayaba-cho 1-chome Chuo-ku, Tokyo (JP)
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Respondent: (Opponent 2)	Paul Hartmann AG Paul-Hartmann-Straße 12 89522 Heidenheim (DE)
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Respondent: (Opponent 3)	KIMBERLY-CLARK WORLDWIDE, INC. 401 North Lake Street Neenah WI 54956 (US)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 27 April 2010 revoking European patent No. 1184012 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I. European patent No. 1 184 012 was revoked by the opposition division by way of its decision posted on 27 April 2010.

II. The opposition division held that the subject-matter of claim 1 according to the main request did not meet the requirement of Article 84 EPC as the term "slightly", which had been inserted into the claim, was a relative term which was unclear. Concerning claim 1 of the first auxiliary request, in which the term "slightly" was deleted, the opposition division considered that the skilled person was not in a position to reliably arrive at the claimed product over the whole area claimed, since inter alia the determination of the parameters "core width" and "diaper width" was not considered to be sufficiently disclosed (Article 83 EPC).

III. On 7 July 2010 the appellant (patent proprietor) filed an appeal against this decision and paid the appeal fee. A statement setting out the grounds of appeal was received at the European Patent Office on 23 August 2010 and having a main request and twelve auxiliary requests annexed thereto, together with a request to set aside the decision of the opposition division and to remit the case to the opposition division for consideration of the remaining objections.

IV. With its submission of 6 December 2011, the appellant filed a new main request and new auxiliary requests 1 to 13 replacing all previous requests.

V. With its communication annexed to a summons to oral proceedings, the Board indicated that

- no reasons had been given by the appellant as to why the main request and auxiliary requests 1 to 6 overcame the objection that there was no possibility for the skilled person to arrive at the claimed diaper having a core width of 30% and a ratio contractibility width / diaper width exceeding 70%;

- the addition of the term "slightly" in the wording of claim 1 of auxiliary requests 7 to 13 did not appear to meet the requirement of clarity in Article 84 EPC, and that deletion of the term "slightly" might require consideration under Article 123(2) EPC.

VI. Oral proceedings were held before the Board on 21 January 2014.

VII. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main, alternatively one of the first to fifth auxiliary requests, all as filed with the letter dated 21 November 2013, alternatively on the basis of the sixth auxiliary request filed during the oral proceedings, and that the case be remitted to the Opposition Division in the event of one of these requests being found to satisfy the requirements of Articles 83, 84 and 123(2) EPC.

The respondents all requested that the appeal be dismissed.

VIII. Claim 1 of the main request reads:

"A shorts type disposable diaper (1) comprising an absorbent body (10) having a liquid-permeable topsheet

(2), a liquid-impermeable anti-leakage sheet (3) and a liquid-retentive absorbent core (4) interposed between said topsheet (2) and said anti-leakage sheet (3), and said diaper having a plurality of body-surrounding elastic members (71a, 71b) provided at a body-surrounding portion (D) which is located between a waist opening portion (5) and a leg opening portion (6), said body-surrounding elastic members (71a, 71b) extending in the circumferential direction of the diaper, characterized in that:

said body-surrounding elastic members (71a, 71b) are fixedly disposed in at least side portions which extend outward from longitudinal side edges of said absorbent core (4) in a stretched state so as to manifest elastic contractibility such that gathers are formed, but are not disposed in at least the center of the portion where said absorbent core (4) exists, wherein the body-surrounding elastic members (71a, 71b) are disposed in body-surrounding side portions (D1) with their inward ends overlapping the side edges of the absorbent core (4), and the parts of the body-surrounding elastic members (71, 71b) that overlap the lateral side edges of the absorbent core (4) are in a non-stretched state to have no contractibility, or alternatively, are additionally disposed in the portion where said absorbent core (4) exists in such a manner that elastic contractibility does not manifest in at least said center,

the absorbent core is rectangular or of an hourglass shape having a constant width (W2) at the positon which corresponds to the position where said body-surrounding elastic members are disposed, and the ratio of the width (W2) of said absorbent core at the position which corresponds to the position where said body-surrounding elastic members are disposed to the width (W1) of said diaper is 30 to 60 %,

the ratio of the width (W3 + W4) of parts in which said elastic members manifest elastic contractibility to the width (W1) of said diaper is 40 to 70%, and
wherein the disposable diaper comprises an exterior member (11) having an outer sheet (12), said exterior member (11) being disposed on the anti-leakage sheet (3) side of said absorbent body (10), said absorbent body (10) and said exterior member are fixed together by partial bonding;
wherein said body-surrounding elastic members (71a, 71b) are disposed between said outer sheet (12) which constitutes the outermost surface of said diaper and said anti-leakage sheet (3) or any other sheet."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the following features have been added:

The feature "wherein the width (W1) of said diaper at the position which corresponds to the position where said body-surrounding elastic members are disposed is constant" is inserted after the feature concerning the ratio of the width (W2) to the width (W1) of the diaper being 30 to 60%;

The feature "the exterior member having a rectangular shape with middle portion of each lateral side curved inward to make a hourglass shape," is added to the feature "said exterior member (11) being disposed on the anti-leakage sheet (3) side of said absorbent body (10)".

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the shape of the absorbent core is limited to being rectangular, (i.e. by deletion of the terminology "or of an hourglass shape").

Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the following feature is added:
"and there is provided no body-surrounding elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)" being inserted after the feature of "wherein the body-surrounding elastic members (71a, 71b) are disposed in body-surrounding side portions (D1) with their inward ends overlapping the side edges of the absorbent core (4)".

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that it additionally includes the features added to claim 1 of auxiliary request 1.

Claim 1 of auxiliary request 5 differs from claim 1 of auxiliary request 4 in that the shape of the absorbent core is limited to being rectangular (consistent with claim 1 of auxiliary request 2).

Claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 5 in that the following features are added:

- "and a pair of cuffs (8) on the lateral sides of the absorbent body (10), each cuff (8) having a cuff elastic member (81) at its free end", being inserted in the preamble after the feature of the "liquid-retentive absorbent core (4) interposed between said topsheet (2) and said anti-leakage sheet (3)";

- "having a plurality of waist elastic members (51a, 51b)", being inserted in the preamble after the

feature of "the diaper having a plurality of body-surrounding elastic members (71a, 71b) provided at a body-surrounding portion (D) which is located between a waist opening (5)";

- "having leg elastic members (61a, 61b)", being inserted in the preamble after the feature "and a leg opening portion (6)";

- "such that the body-surrounding elastic members (71a, 71b) overlap the side edges of the absorbent core (4) to an extent up to but not including the cuff elastic members (81)", being inserted after the feature "and there is provided no body-surrounding elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)".

IX. The appellant essentially argued:

The main request met the requirements of Article 123(2) EPC.

The insertion of the feature "the absorbent core is rectangular or of an hourglass shape" was supported by the disclosure in paragraphs [0015] and [0024] of the patent (which corresponded to paragraphs [0014 and 0023] of the application as filed). Although paragraph [0015] referred to the hourglass shape being that of the exterior member, a skilled person would understand that the same "hourglass" shape applied equally to the absorbent core. Paragraph [0024] directly referred to the possibility of an absorbent core having the shape of an hourglass. The straight design of an hourglass shape was clear to the skilled person, even more so

considering the Figures illustrating such form. Hence, the skilled person would consider a constant width W1 as implicitly being present in the hourglass shape - in particular in view of shorts-type diapers usually having such constant width; this was also consistently shown in the Figures illustrating a straight-edged hourglass shape of the exterior member confirming the reference in paragraph [0015] to such shapes.

It was admissible to omit the term "slightly" in the added feature "wherein the body-surrounding elastic members (71a, 71b) are disposed in body-surrounding side portions (D1) with their inward ends overlapping the side edges of the absorbent core (4),". The application as filed disclosed directly and unambiguously to the skilled person, generally, that an overlap should be present (as supported by the disclosure in paragraphs [0020], [0021] and [0037] of the published patent specification as well as examples 2 and 4 in Table 1 - all these citations being identical in wording to the originally filed text passages). According to the examples, an overlap of 20 and 25 mm was disclosed - which was no slight overlap - and thus the term "slightly" could be deleted.
It was also possible to omit the wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)", because this part of the paragraph, from where the above amendment originated, merely explained, with negative wording, what was already included in the claim by positive wording.

Concerning the alternative embodiment defined within claim 1, it was evident that the body-surrounding elastic members manifested elastic contractibility only

in the parts which were disposed in the body-surrounding side portions D1. The fact that this principle applied also for the alternative embodiment was apparent from the disclosure in paragraphs [0022] and [0029], and related to the effect of prevention of bunching.

In view of the conclusions reached by the Board with respect to the main request (see below) there is no need to add any further remarks to the appellant's arguments made in respect of auxiliary requests 1 to 4.

Claim 1 of auxiliary request 5 was an attempt to overcome all the objections raised by the Board in its communication. The Figures as well as the paragraphs cited above supported the amendments. It was irrelevant for the desired prevention of bunching whether the body-surrounding elastic members were provided in the area from the centre in the width direction to the vicinity of both the lateral side edges of the absorbent core as these portions did not manifest elastic contractibility. Accordingly, the exact amount of overlap was irrelevant. As already set out for the main request, a constant width W1 in the area D was the only reasonable conclusion for an absorbent core having rectangular shape. The leg elastics which crossed the absorbent core could not be considered as body-surrounding elastic members since they had no such function.

Claim 1 of auxiliary request 6 overcame all the preceding objections. It should be admitted into the proceedings because only during oral proceedings were some of the objections adequately explained by the opponents. The term "overlap... up to but not

including" in the amended feature was to be read as meaning that the elastic members "do not go so far as".

X. The respondents essentially argued:

The main request did not meet the requirements of Article 123(2) EPC. There was no disclosure of an absorbent core having an hourglass shape with a constant width in the D-regions. The only disclosure in this respect, even then not unambiguous, was in Figure 1. However, this sketch should not be taken as a feature of the invention (T 906/97). Furthermore, the omission of the term "slightly" and the deletion of the wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)" led to an impermissible intermediate generalisation of the content of the application as filed.

The respondent's objections in relation to auxiliary requests 1 to 4 did not need to be discussed further as they include one or more of the features which in the event the Board concluded failed to meet the requirements of Articles 123(2) and/or 84 EPC in the context of the main request (see below).

Concerning auxiliary request 5, the amendments were partly based upon the disclosure in paragraph [0015] of the patent, in particular with regard to the rectangular shape of the absorbent core shown in Figure 2B. However, the disclosure in paragraph [0015] included further details of a specific embodiment which were not included in the wording of claim 1. The term "slightly" - while not being entirely clear - had a meaning in the embodiment of Figures 2, in relation to

which it was disclosed, and therefore its omission amounted to a violation of Article 123(2) EPC which was not overcome by the added feature including the terminology "to the vicinity of", which was also not clear.

Auxiliary request 6 should not be admitted into the proceedings. All objections had been raised earlier and, moreover, the issue concerning the omission of the word "slightly" in the claim language was not resolved. The wording of the claim "up to but not including the cuff members (81)" allowed a considerable overlap of the body-surrounding elastic members with the side edges of the absorbent core and this wording did not correspond to the extent of overlap shown in the Figures and thus was not applicable for the claimed embodiment: It could not clearly and unambiguously replace the word "slightly". Thus, neither the requirements of Article 84 EPC nor of Article 123(2) EPC were met.

Reasons for the Decision

1. Main request - Article 123(2) EPC

1.1 Insertion of the feature "the absorbent core is [rectangular or] of an hourglass shape"

1.1.1 Figure 1 was cited by the appellant as disclosing this feature. Figure 1 is a frontal perspective view of a shorts-type diaper. The exterior member (11) can be identified in the frontal region and an absorbent core

(4) is to be considered included in its interior in view of such reference sign being present. However, the shape, extension or position of the absorbent core inside of the exterior member cannot be known since only the rough shape of the exterior member (11) is specifically drawn into the sketch - which leaves open the shape, design/extension of the absorbent core which is internally placed with respect to this. This Figure is thus not suitable for disclosing an absorbent core having an hourglass shape.

1.1.2 The view of the appellant that an exterior member having an hourglass shape would usually lead to an absorbent member also having such a shape can only be accepted as a (general theoretical) possibility, but not as a clear and unambiguous disclosure for such possibility applying in the current case. Any shape for the absorbent core could be used in combination with such an exterior member - as consistently shown in Figure 2A having an exterior member of hourglass shape linked to a rectangular absorbent core. Hence, Figure 1 and paragraph [0015] do not unambiguously disclose an absorbent core having an hourglass shape.

1.1.3 The disclosure in paragraph [0024] which was further cited as a basis for the disclosure states that "In case where the absorbent core 4 has its width varied in the longitudinal direction, for example, where it has the shape of a hourglass, the width W2 is measured at a position which corresponds to the position where the body-surrounding elastic members 71a and 71b are disposed.". Accordingly, such statement remains ambiguous - at least in the context of the claim since an hourglass shape, whilst this terminology per se is clear (albeit broad), can have constant or varying widths (rounded and/or sloped parts) at different

portions thereof - not least where the widths W1 and W2 have to be determined and no constant widths are disclosed as being present in any particular portions of the hourglass shape.

1.1.4 The appellant considered the width W1 as being the largest width in the flat state of the diaper such as shown in Figure 2A, which specifically discloses a constant width W1 in relation to a constant width W2. No constant width W1 being claimed, the claim is not limited to the embodiment of Figure 2A nor does it refer to the width W1 being the largest width in the flat state of the diaper and, accordingly, there is no disclosure for a diaper having an absorbent core being generally of an hourglass shape in relation to a constant width W1. The requirement of Article 123(2) EPC is thus not met.

1.2 Omission of the term "slightly" and of the wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)" from the following feature added to claim 1: "wherein the body-surrounding elastic members (71a, 71b) are disposed in body-surrounding side portions (D1) with their inward ends overlapping the side edges of the absorbent core (4)"

1.2.1 On page 6, second paragraph of the application as filed, the following feature is disclosed: "wherein the body-surrounding elastic members (71a, 71b) are disposed in body-surrounding side portions (D1) with their inward ends slightly overlapping the side edges of the absorbent core (4),". The wording in this paragraph is identical to the corresponding wording in paragraph [0021] of the published patent. This feature

was added to claim 1, however, without including the word "slightly" or the further wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)" of this paragraph, which explains more specifically the kind of overlap and that the term "slightly" is related to a portion which is, broadly stated, somewhere in "the vicinity of both the lateral side edges of the absorbent core".

1.2.2 Although neither the term "slightly" nor the term "the vicinity of" can be considered as being clear, such that neither term is suitable for being included in the claim, both terms define, when viewed by a skilled person in combination with the particular arrangement depicted in Figure 2A, a specific overlap.

1.2.3 Figure 2A illustrates that the body-surrounding elastic members are located in the area D (D1) and that they are positioned outside of the absorbent core and additionally slightly overlap the absorbent core (4) at its longitudinal edges within the region which is covered by cuff members. Hence, there is shown a slight yet rather specific overlap in relation to other features. Inserting the added feature while omitting the word "slightly", and omitting the complementary wording in the paragraph from where such feature is taken, thus amounts to an intermediate generalisation of the content of the application as filed and a contravention of Article 123(2) EPC.

1.2.4 The appellant considered the application as filed as disclosing directly and unambiguously to the skilled person, generally, that an overlap should be present.

In support of such view paragraphs [0020], [0021] and [0037] as well as examples 2 and 4 in Table 1 were cited. Paragraphs [0020] and [0021] refer to the Figures, and in Figures 1 and 2A a specific "slight" overlap can be recognized. Paragraph [0037] refers to another embodiment which is therefore not to be considered in the context of the added feature which concerns specifically the embodiment shown in Figures 1, 2A and 2B. The appellant also argued that the overlap indicated in Table 1 for Examples 2 and 4 has to be considered as representing a general overlap "in the vicinity of both lateral side edges of the absorbent core" as these examples represent shorts-type diapers shown in Figures 1 and 2 (paragraph [0039]). However no information about the extension of the cuff member is available for these examples, so it cannot be established unambiguously whether these data represent a slight overlap in the context disclosed or not.

1.2.5 Also, the omission of the wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)" which is present in the paragraph from which the added feature emanates, clarifies, with respect to those embodiments, the position of the body-surrounding elastic members as being restricted in their extension, whereas however no such restriction is present in claim 1. Hence, claim 1 contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

1.3 Amended ratio of the width (W3 + W4) of parts in which said elastic members manifest elastic contractibility to the width (W1) of the diaper to the range of 40 to 70%.

1.3.1 In originally filed claim 1 as well as in granted claim 1, the ratio of this width was claimed as lying in the range of 40 to 95%. The presently claimed range for the ratio of 40 to 70% represents the logical consequence of the claimed ratio of 30 to 60% for W2/W1 in the case where W1 is constant.

1.3.2 Figure 2A illustrates an embodiment of a shorts-type diaper having a constant width W1 in the region of the body-surrounding side portions (D1). However, such Figure is related to a particular embodiment which includes additional features, such as for example a specific design of the leg elastics in relation to the body-surrounding elastic members, a specific extension of the body-surrounding elastic members themselves and the presence of elasticised cuff members. These features not being claimed, and there being no explicit or implicit requirement in claim 1 for W1 being constant, no clear and unambiguous disclosure for the claimed range of the ratio based upon (merely) any width W1 can be acknowledged for the now claimed combination of features. The requirement of Article 123(2) EPC is thus not met.

1.3.3 Additionally, there is no disclosure in the specification which unambiguously links a constant width W1 to a specific range of the widths W3 and W4 when considering the alternatively claimed embodiment ("the parts of the body-surrounding elastic members (71, 71b) that ... are additionally disposed in the portion where said absorbent core (4) exists in such a manner that elastic contractibility does not manifest in at least said center"). Also for this reason, the claimed combination of features is not disclosed and the requirement of Article 123(2) EPC is not met.

The further objections made against this request did not require further consideration as the request was not allowable for the above reasons alone.

2. *Auxiliary requests 1 and 2*

The reasons given above (see item 1.2 above) in relation to the objections concerning the non-inclusion of the wording "and there is provided no elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)", linked to the omission of the term "slightly" in the preceding wording of claim 1, still apply. Hence, the requirement of Article 123(2) EPC is not met for the same reasons as apply to the main request and these requests are not allowable.

3. *Auxiliary request 3 and 4*

In claim 1 of auxiliary requests 3 and 4, the feature that the absorbent core is of an hourglass shape has been reintroduced. Having already found (see item 1.1 above) that such feature was not clearly and unambiguously disclosed in the application as filed in relation to having a constant width, the requirement of Article 123(2) EPC is not met for the same reasons as given in respect to claim 1 of the main request, whereby these requests are therefore also not allowable.

4. *Auxiliary request 5*

4.1 In claim 1, the feature concerning the hourglass shape of the absorbent core has been deleted and the shape of

the absorbent core is now limited to being rectangular (consistent with claim 1 of auxiliary request 2).

4.2 Claim 1 additionally includes the wording "and there is provided no body-surrounding elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)".

4.3 According to the appellant, its intention was to further limit the claimed diaper to the embodiment shown in the Figures and referred to in paragraphs [0020] to [0024], and to overcome the objections linked to the omission of the term "slightly".

4.4 However, as already set out above (see item 1.2 above) with respect to claim 1 of the main request, in these paragraphs, a specific embodiment is referred to - consistently illustrated in Figure 2A - , which embodiment thus includes a specific extension of the overlap which however cannot be considered as being clearly defined with the vague wording "slightly" and "in the vicinity of both the lateral side edges of the absorbent core (4)" (Article 84 EPC). Additionally, this embodiment is illustrated as including further features, such as outer standing cuffs and leg elastics, none which is included in the wording of the claim, thus resulting in subject-matter which is an inadmissible intermediate generalisation of the content of the application as originally filed, contrary to the requirement of Article 123(2) EPC.

4.5 Hence, the term "to the vicinity of" is not clear, and the claimed diaper is not disclosed in the general form now claimed but only together with further features. Consequently neither the requirement of clarity

(Article 84 EPC) nor the requirement of Article 123(2) EPC is met, so that this request is not allowable. The further objections made against this request do not require further consideration as the request was not allowable at least for the foregoing reasons.

5. Auxiliary request 6

5.1 In view of this request being filed during oral proceedings and thus subsequent to the period provided for in Article 12(2) of the Rules of Procedure of the Boards of Appeal (RPBA), it may be admitted and considered at the Board's discretion (Article 13(1) (RPBA)).

5.2 Claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 5 in that the following features have been added:

(a) "and a pair of cuffs (8) on the lateral sides of the absorbent body (10), each cuff (8) having a cuff elastic member (81) at its free end", which feature has been inserted in the preamble;

(b) "having a plurality of waist elastic members (51a, 51b)", which has been inserted in the preamble of claim 1 following the feature "said diaper having a plurality of body-surrounding elastic members (71a, 71b) provided at a body-surrounding portion (D) which is located between a waist opening portion (5)";

(c) "having leg elastic members (61a, 61b)", which has been inserted into the preamble in relation to the leg opening portion (6);

(d) "such that the body-surrounding elastic members (71a, 71b) overlap the side edges of the absorbent core (4) to an extent up to but not including the cuff elastic members (81)", which has been inserted after the feature "and there is provided no body-surrounding elastic member in the area from the center in the width direction to the vicinity of both the lateral side edges of the absorbent core (4)".

5.3 The appellant argued that such amendments provided a limitation and clarification of the claim, since the kind of overlap was now more precisely defined as concerning the side edges of the absorbent core "to an extent up to but not including the cuff elastic members (81)" and, additionally, the claimed subject-matter was clearly limited to the features of the embodiment shown in Figure 2 (i.e. Figures 2A and 2B) and disclosed in paragraphs [0020] to [0024].

5.4 Contrary to the appellant's view, the Board finds that the wording "to an extent up to but not including the cuff elastic members" in the amended feature (d) defines subject-matter which is not unambiguously disclosed in the content of the application as filed, contrary to Article 123(2) EPC. In relation to this feature, Figure 2A shows a minor overlap at the longitudinal side edges of the absorbent core, overlapping the edge of the cuff members to a minimal proportion of the width of the cuff, but far from extending up to the cuff elastic members 81. Hence, the embodiment illustrated in this Figure and disclosed in relation to the cuff members implies an overlap only to a certain extent, but not "up to but not including the cuff elastic members". Additionally, this embodiment

includes as a further feature the presence of the leg elastics linked to the design of crossing the absorbent core structure from one side to the other - which feature is not in the claim. Also, the amendments are at least *prima facie* not suitable to clarify in any precise way what the term "to the vicinity of both lateral side edges" implies structurally, such that the related lack of clarity also persists (Article 84 EPC). Additionally, the subject-matter of claim 1 is not limited to the embodiment disclosed, but only to a more general disposable diaper, such that claim 1 defines subject-matter extending beyond the content of the application as filed, contrary to Article 123(2) EPC.

5.5 Thus, claim 1 of this request is not *prima facie* allowable, a necessary requirement for admitting the request into the proceedings at such a late stage having regard, *inter alia,* to the need for procedural economy. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request into proceedings. The further objections made against this request did not require consideration.

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