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**Datasheet for the decision  
of 16 September 2015**

**Case Number:** T 1585/11 - 3.2.06

**Application Number:** 03814592.6

**Publication Number:** 1572054

**IPC:** A61F13/15

**Language of the proceedings:** EN

**Title of invention:**

DISPOSABLE UNDERGARMENT WITH A DETACHABLE CROTCH MEMBER AND  
METHOD FOR THE USE THEREOF

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

SCA Hygiene Products AB

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - (yes)



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Case Number: T 1585/11 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 16 September 2015**

**Appellant:** SCA Hygiene Products AB  
(Opponent) 405 03 Göteborg (SE)

**Representative:** Zacco Sweden AB  
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**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
(Patent Proprietor) 401 North Lake Street  
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**Representative:** Davies, Christopher Robert  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 May 2011 concerning maintenance of the  
European Patent No. 1572054 in amended form.

**Composition of the Board:**

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

## Summary of Facts and Submissions

I. By way of its interlocutory decision, the opposition division found that European Patent No. 1 572 054 as amended met the requirements of the European Patent Convention (EPC).

II. Claim 1 found allowable by the opposition division reads as follows:

"A disposable undergarment (2) comprising:  
a body chassis member (8; 108; 124) elongatable in at least a first direction (502) between at least a first condition and second condition, wherein said body chassis member (8; 108; 124) has a greater elongation when in said second condition than when in said first condition; and  
a crotch member (50;150) detachably connected to said body chassis member (8; 108; 124) at a plurality of attachment locations (200) wherein at least a portion of each of said attachment locations (200) is detached as said body chassis member is elongated between said first and second conditions,  
wherein said plurality of attachment locations (200) are spaced apart in said first direction (502), and wherein said crotch member (50, 150) comprises opposite side portions (202) spaced apart in said first direction (502) and a centerline (204) disposed therebetween, wherein some of said plurality of attachment locations (200) are spaced apart in said first direction (502) between said centerline (204) and one of said opposite side portions (202) and wherein each of said some of said plurality of attachment locations (200) have a detachment strength, wherein said detachment strengths of said some of said plurality of attachment locations (200) spaced apart

between said centerline and said one of said opposite side portions (202) become progressively stronger between said one of said opposite side portions (202) and said centerline (204)."

III. The appellant (opponent) filed an appeal against the decision of the opposition division and referred to

D1 US-A-4 834 736

for substantiating that the requirement of Article 56 EPC was not met by the amended claims of the patent in the form found allowable by the opposition division.

According to its view, D1 disclosed a disposable undergarment having a crotch member detachably connected to a body chassis member by means of breakaway bonds that were broken away when the chassis was stretched. The breakaway bonds could be placed in different locations: in the waist region, close to the leg openings and at the leg gathers (Figures 2, 8 and 9). D1 taught the use of strong bonds at the centre of the garment in combination with less strong bonds between the centre and the lateral sides of the garment.

Thus, it would have been obvious to the skilled person to provide bonds with strengths increasing progressively towards the centre of the garment. No particular effect related to such a strength distribution was shown when compared to bonds having equal detachment strengths. Additionally, equal detachment strengths were originally considered as a suitable alternative. Hence, the provision of bonds

with progressively increasing strength represented an arbitrary alternative solution.

Moreover, the requirements of Articles 123(2), 54 and 83 EPC were indicated as not being fulfilled but without further substantiation.

The appellant requested that the decision under appeal be set aside and the patent be revoked. Oral proceedings were requested.

- IV. In reply, the respondent (proprietor) argued that the objective technical problem underlying the invention was the provision of a disposable undergarment having improved comfort for a variety of different size users and that there was no suggestion of providing an arrangement of successively higher strength detachable attachments anywhere in the cited prior art; D1 only disclosed breakable bonds of one particular strength; the subject-matter of claim 1 thus involved an inventive step.
- V. In a communication annexed to the summons to oral proceedings, the Board indicated its preliminary view that the requirement of Article 56 EPC appeared to be met since no successively higher tensile forces of the detachment arrangement were seemingly disclosed or suggested in D1. The Board also stated *inter alia* that whilst reference had been made to objections under Articles 123(2), 83 and 54 EPC made during opposition proceedings, that the decision under appeal had dealt with those objections and the appellant had given no reason why the opposition division's decision should be overturned in that regard, such that the criteria mentioned in Article 12(2) RPBA were considered not to

be met in regard to the objections other than inventive step in regard to D1.

VI. With its letter of 7 July 2015, the appellant indicated that it did not intend to attend the oral proceedings and reiterated its arguments concerning lack of inventive step of the subject-matter of claim 1 with regard to D1.

VII. In reply, the respondent requested dismissal of the appeal, stating that nothing new had been raised in the appellant's letter in response to the Board's provisional opinion that claim 1 was inventive, such that a decision without oral proceedings appeared possible, while maintaining a request for oral proceedings as its auxiliary request.

VIII. In response to a communication from the Board stating that the Board was in a position to reach a decision without oral proceedings and thus asking the appellant to confirm whether it maintained its request for oral proceedings, the appellant withdrew its request for oral proceedings on 9 September 2015.

## **Reasons for the Decision**

### *1. Grounds of appeal*

1.1 According to Article 12(2) RPBA the statement of grounds of appeal and the reply shall contain a party's complete case. In the grounds of appeal, the

- submissions of the appellant rely on the specific citation concerning D1 and that the subject-matter of claim 1 lacks an inventive step.
- 1.2 The appellant set out in its grounds of appeal that all arguments raised during opposition proceedings were maintained and reference was made (in addition to the above substantiated objection concerning inventive step) simply to Articles 123(2), 83 and 54 EPC. However, no substantive submissions were made with respect to any of the objections apart from that made with regard to inventive step. Hence, in respect to Articles 123(2), 83 and 54 EPC, the grounds of appeal do not "set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld" nor do they "specify expressly all the facts, arguments and evidence relied on" as required by Article 12(2) RPBA. The appellant had also been made aware of this in the Board's communication, and the appellant did not supply any response thereto.
- 1.3 The mere reference to Articles of the EPC does not meet the criteria laid out in Article 12(2) RPBA. Accordingly, only the objection concerning inventive step in the referenced context (i.e. with regard to D1) meets the criteria set out in Article 12 RPBA as a basis of proceedings and is thus considered.
2. *Inventive step (Article 56 EPC)*
- 2.1 D1 discloses a disposable absorbent garment having an absorbent insert structure. The insert is attached to the outer cover by selectively breakable bonds placed along both the waist and leg openings of the outer cover. Figures 2 and 9 show such an absorbent article.

Bonds are disclosed at different locations: permanent bonds 51 at the waist region, breakable bonds 51' in the waist region and close to the leg openings, and bonds 51" at the leg gathers.

- 2.2 D1 does not disclose the final feature of claim 1: "wherein said detachment strengths of said some of said plurality of attachment locations (200) spaced apart between said centerline and said one of said opposite side portions (202) become progressively stronger between said one of said opposite side portions (202) and said centerline (204)".
- 2.3 In D1, the bonds in the waist region with reference number 51 are disclosed as being "functionally permanent" (col. 7, lines 49 - 55), while breakable bonds are denoted with reference numeral 51' (col. 7, lines 51 - 52), these being used for integrating the insert at the outermost lateral portions of one or both of the waist attachment zones and along the lateral edges of the insert (col. 7, l. 56 - 60). No disclosure or suggestion to provide the breakable bonds with different (let alone directionally progressively higher, as defined in claim 1) detachment strength is present.
- 2.4 The technical problem to be solved is to provide an undergarment having specific fit adjustability or improved comfort for a variety of different size users (see e.g. paragraph [0071] of the patent). When starting from D1, there is no suggestion or hint to arrive at the claimed solution.
- 2.5 The appellant argued that the provision of bonds with progressively increasing strength would merely be an "arbitrary alternative solution", and that no



"particular effect" was disclosed in the patent in relation to progressively increasing detachment strength. Indeed, the patent does state in paragraph [0072] that an arrangement ("not according to the invention") with equal attachment strength would also provide for "successive" detachment. Nevertheless, such an embodiment would not provide the successively higher tensile forces (see paragraph [0070]), referred to by the respondent as a "discontinuous attachment gradient", which would provide a different and improved fit compatibility, and thus not merely an arbitrary alternative.

2.6 Hence, the subject-matter of claim 1 is not obvious when starting from D1 as the closest prior art in view of the problem to be solved. Since this is the only attack made by the appellant, the Board thus finds that the subject-matter of the claims involves an inventive step, whereby the requirement of Article 56 EPC is met.

2.7 Since the main request is allowable, the respondent's auxiliary requests do not need to be considered.

**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