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**Datasheet for the decision  
of 20 February 2014**

**Case Number:** T 2441/11 - 3.3.09

**Application Number:** 00903351.5

**Publication Number:** 1165313

**IPC:** B32B3/10

**Language of the proceedings:** EN

**Title of invention:**

WEB HAVING DISCRETE STEM REGIONS

**Patent Proprietor:**

3M Innovative Properties Company

**Opponent:**

Velcro, Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 84, 100(b), 123(2)

**Keyword:**

Amendments - added subject-matter (no)

Clarity (yes)

Insufficiency- fresh ground for opposition not considered- no  
consent of the patent proprietor

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

G 0009/91

**Catchword:**



**Beschwerdekammern  
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Case Number: T 2441/11 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 20 February 2014**

**Appellant:** Velcro, Inc.  
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**Representative:** Peterreins, Frank  
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**Respondent:** 3M Innovative Properties Company  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 September 2011 maintaining European patent  
No. 1165313 in amended form.**

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** N. Perakis  
R. Menapace

## Summary of Facts and Submissions

I. Mention of the grant of European patent No. 1 165 313 in the name of 3M Innovative Properties Company, was published on 15 December 2004 (Bulletin 2004/51). The patent was granted with 16 claims: claims 1-8 related to a web material and claims 9-16 related to a method of making a web material. For this decision only the method claims are of relevance. Claim 9 reads as follows:

"9. A method of making a web material having a plurality of stems extending from discrete regions of the web, the method comprising:

- (a) providing a web;
- (b) providing discrete quantities of a polymeric material at a temperature above its softening point;
- (c) fusing the discrete quantities of the polymeric material to the web; and
- (d) forming a plurality of stems in each of the discrete quantities of the polymeric material."

II. An opposition was filed by Velcro Inc requesting revocation of the patent in its entirety on the grounds that the claimed subject-matter was neither novel nor inventive and extended beyond the content of the application as filed (Articles 100(a) and 100(c) EPC).

The following document, among others, was filed with the notice of opposition:

D5: US 5 669 120 A.

III. By an interlocutory decision issued in writing on 21 September 2011 the opposition division maintained that patent on the basis of claims 1-4 of auxiliary request 2 submitted during the oral proceedings of 23 September 2009 and corrected with letter of 31 March 2010.

Claim 1 of this request reads as follows:

"1. A method of making a web material having at least two major sides and having a plurality of stems extending from discrete regions on the first major side of the web, the method comprising:

- (a) providing a web;
- (b) providing discrete quantities of a polymeric material on the first major side of the web, wherein the polymeric material is provided at a temperature above its softening point;
- (c) fusing the discrete quantities of the polymeric material to the first major side of the web; and
- (d) forming a plurality of stems in each of the discrete quantities of the polymeric material,

wherein the discrete quantities of polymeric material are provided by extruding molten polymer in intermittent quantities or

wherein the discrete quantities of polymeric material are provided by one or more rotating cutting blades positioned intermediate a source of polymeric material and the web, wherein the cutting blades cut the polymeric material into discrete quantities."

The opposition division considered that the claimed subject-matter fulfilled the requirements of Articles 123(2) and (3) EPC, was novel *inter alia* over

D5 and involved an inventive step, considering D5 to represent the closest state of the art.

IV. On 28 November 2011 the opponent (in the following the appellant) filed an appeal against the decision of the opposition division and paid the appeal fee on the same day. The statement setting out the grounds of appeal was filed on 19 January 2012 including among others the following documents:

D13: US 4 618 384 A;

D14: US 4 995 928 A;

D15: US 5 429 840 A;

D16: US 3 756 573 A; and

D19: technical sheet of Hostacom M4 U05 102943, a polypropylene homopolymer from LyondellBasell Industries.

The appellant requested that the decision of the opposition division be set aside and the patent be revoked, since claim 1 of the request held allowable by the opposition division infringed Articles 123(2), 83, 84, 54 and 56 EPC.

V. With a letter of 2 August 2012 the patent proprietor (in the following the respondent) filed observations on the appeal and requested that the appeal be dismissed, i.e., that the patent be maintained on the basis of auxiliary request 2 held allowable by the opposition division (point III above). A clear copy of this request marked as "Main Request" was also filed. The respondent also requested that documents D13-D16 not be admitted into the proceedings on the grounds that they were late-filed and not highly relevant.

- VI. Oral proceedings were held before the board on 20 February 2014. During the oral proceedings the respondent contested the introduction into the proceedings of a fresh ground of opposition based on Article 100(b) EPC. Furthermore, the respondent withdrew its objection to admitting documents D13-D16 into the proceedings.
- VII. The relevant arguments put forward by the appellant in its written submissions and during the oral proceedings may be summarised as follows:
- The claims of the main request did not fulfil the requirements of Article 123(2) EPC since claim 1 as amended did not find support in the application as filed. The contested features were those of the web material having at least two major sides, forming stems on the first major side of the web, providing discrete quantities of polymeric material on that first major side and fusing those discrete quantities to that first major side of the web. It also concerned the provision of the polymeric material at a temperature above its softening point. According to the appellant, all these features were intermediate generalisations of the originally disclosed features.
  - Claim 1 lacked clarity in view of the definition of step (b) in the claimed method. On the one hand it was not clear how and where the extruded material reached the first major side of the web. On the other hand the expression "at a temperature [of the polymeric material] above its softening point" did not have a clear and unambiguous meaning since that temperature varied considerably depending on the measuring method used. That was

illustrated by D19 for a specific polymer used in the art. Furthermore, it was not clear whether the discrete quantities of polymeric material should be in a molten state.

- The claimed invention did not fulfil the requirements of sufficiency of disclosure. Since that was an issue of great importance, the board should consider that ground of opposition in the appeal proceedings.
  
- Claim 1 lacked novelty in view of the disclosure of D5. That document disclosed the disputed feature of the provision of discrete quantities of a polymeric material on the first major side of the web and implied the feature of the provision of discrete quantities of polymeric material by extruding molten polymer in intermittent quantities. Regarding the latter, Figure 4E of D5 disclosed a web material having a plurality of stems extending from discrete regions alternately arranged in the longitudinal direction (machine direction) of the web, which could be manufactured only by a method using intermittent extrusion of the molten polymer.
  
- Even if the above features were considered not to be disclosed in D5, the claimed method lacked an inventive step. First of all, the distinguishing features over D5 related to completely unrelated problems. Secondly, the provision of the extruded molten polymeric material on the first major side of the web was only one of two alternatives available to the skilled person and did not require any inventiveness. Regarding the intermittent extrusion of the polymeric material,



it was the most appropriate of the three alternatives available for the manufacture of the web of figure 4E of D5, the other two being peeling off the undesirable part of the polymer film or the use of masks. Furthermore, the intermittent extrusion of molten polymer was obvious in view of D13 and D14 which meant that the skilled person would have used it in order to manufacture the web of figure 4E of D5, quite apart from the fact that D13 and D14 showed that intermittent extrusion belonged to the general technical knowledge of the skilled person in this technical field.

VIII. The relevant arguments put forward by the respondent in its written submissions and during the oral proceedings may be summarised as follows:

- Claim 1 of the main request fulfilled the requirements of Article 123(2) EPC. Its subject-matter was based on the combination of originally filed claims 9, 11 and 12, with a single clarifying amendment taken from originally filed claim 1 concerning the web material, namely that it had two major sides and that the discrete quantities of the polymeric material were provided on the first major side of the web.
- The objections raised under Article 84 EPC should be disregarded as the features contested by the appellant were part of the granted claims and lack of clarity was not a ground for opposition. Furthermore, step (b) of the claimed method should not be understood to mean anything other than step (b) of method claim 9 as granted. Specifically, the expression "a temperature above its softening

point" was a feature of granted claim 9 and could not be objected to for lack of clarity. The temperature of the polymer was that of the molten state when extruded, and above the softening point when provided in discrete quantities on the web and when fused with the web material.

- The appellant had not opposed the patent under Article 100(b) EPC. Therefore, the board should not consider an objection of insufficiency of disclosure at this stage.
  
- Claim 1 was novel over D5. That document did not disclose the provision of discrete quantities of a polymeric material on the first major side of the web - it rather disclosed such discrete quantities on its second major side. D5 also did not disclose intermittent extrusion of the molten polymeric material - it rather disclosed its continuous extrusion. The web of figure 4E was not clearly and unambiguously manufactured by a method using intermittent extrusion; quite apart such extrusion went against the disclosure of D5. The web of figure 4E was rather manufactured by a continuous method which used either a mask or peeling of the undesired part of the resin film so that the web material had intermittent arrangement of stems in the longitudinal direction (machine direction).
  
- Claim 1 also involved an inventive step. The skilled person starting from D5 - considered to represent the closest prior art - and aiming at a more versatile and cost-effective method (the claimed method allowed the use of a wider variety of webs and did not require the replacement of the stem-forming roll) would find no motivation in D5

or any of D13-D16 to replace the continuous extrusion of molten polymer by intermittent extrusion. And even if he did so, he would not arrive at the claimed method since this combination did not disclose the provision of the polymeric material on the first major side of the web. Nor would the skilled person find any motivation in the art to modify the method of D5 in such a manner that the polymeric material was provided on the first major side of the web.

- IX. The appellant (opponent) requested that the decision under appeal be set aside and that European patent No. 1 165 313 be revoked.
  
- X. The respondent (patent proprietor) requested that the appeal be dismissed, alternatively, that the patent be maintained on the basis of the claims of the auxiliary request.

### **Reasons for the Decision**

- 1. The appeal is admissible.
  
- 2. Amendments under Article 123(2) EPC
  - 2.1 The appellant objected that claim 1 as maintained by the opposition division infringed Article 123(2) EPC. In particular, it considered that the features of claim 1 highlighted below were not disclosed in the application as originally filed.

"A method of making a web material **having at least two major sides** [feature 1] and having a plurality of stems

extending from discrete regions **on the first major side of the web** [feature 2], the method comprising:

- (a) providing a web;
- (b) providing discrete quantities of a polymeric material **on the first major side of the web** [feature 3], **wherein the polymeric material is provided** [feature 4] at a temperature above its softening point;
- (c) fusing the discrete quantities of the polymeric material **to the first major side of the web** [feature 5]; and
- (d) forming a plurality of stems in each of the discrete quantities of the polymeric material,

wherein the discrete quantities of polymeric material are provided by extruding molten polymer in intermittent quantities [feature 6] or

wherein the discrete quantities of polymeric material are provided by one or more rotating cutting blades positioned intermediate a source of polymeric material and the web, wherein the cutting blades cut the polymeric material into discrete quantities [feature 7].

2.2 Claim 1 covers two alternative methods:

- a first method where the discrete quantities of polymeric material are provided by extruding molten polymer in intermittent quantities [feature 6]; and
- a second method where the discrete quantities of polymeric material are provided by one or more rotating cutting blades [feature 7].

These alternatives result from the combination of independent claim 9 as filed (identical to granted claim 9: see point I above) with original claims 11 and 12 which read as follows:

"11. The method according to claim 9, wherein the discrete quantities of polymeric material are provided by extruding molten polymeric material in a form selected from intermittent quantities ..."

"12. The method according to claim 9, wherein the discrete quantities of polymeric material are provided by one or more rotating cutting blades positioned intermediate a source of polymeric material and the web, wherein the cutting blades cut the polymeric material into discrete quantities."

Consequently there is no doubt that the amendments concerning contested features 6 and 7 fulfil the requirements of Article 123(2) EPC.

2.3 Contested features 1, 2 and 5, which further define the web material obtained by the claimed method, are disclosed in claim 1 as filed which reads as follows:

"1. A web of material having at least two major sides, the web comprising:  
a plurality of discrete regions on at least a first major side of the web; and  
a plurality of stems extending from each discrete region;  
wherein the plurality of stems are fused and formed to at least the first major side of the web".  
[emphasis added]

These features are also disclosed in the paragraph headed "Summary of the Invention" in the application as filed (page 2, lines 2-5).

The board thus concludes that contested feature 1 is expressly disclosed in the application as filed and that contested features 2 and 5 correspond to limitations of the original disclosure "on at least a first major side" to "on the first major side" and "to at least the first major side" to "to the first major side", these limitations not going beyond the original disclosure.

In view of the above, the argument of the appellant that these features are intermediate generalisations of the original disclosure is rejected as unfounded. Thus, also the amendments concerning contested features 1, 2 and 5 fulfil the requirements of Article 123(2) EPC.

2.4 This means that the objection raised by the appellant under Article 123(2) EPC boils down to whether contested features 3 and 4 which define step (b) of the method are directly and unambiguously derivable from the content of the application as filed.

According to the appellant, step (b) of claim 9 as filed

"providing discrete quantities of a polymeric material at a temperature above its softening point"

discloses only the provision of discrete quantities of a polymeric material at a specific temperature without disclosing "how", "where" and "at which temperature" these discrete quantities are provided on the web material.

The appellant argued that step (b) of claim 1 of the main request

"providing discrete quantities of a polymeric material on the first major side of the web ["how": directly; "where": on the first major side], wherein the polymeric material is provided at a temperature above its softening point ["at which temperature"]

differs from step (b) as originally filed in that it requires the discrete quantities to be provided directly on the first major side of the web and that the temperature of the polymeric material when deposited has a temperature above its softening point. These differences had not been disclosed in the original application and were arbitrary intermediate generalisations.

However, the board in agreement with the respondent considers that the skilled person would directly and unambiguously derive step (b) of present claim 1 from the originally filed application. The sensible reading of the claims as filed is that the discrete quantities of the polymeric material which forms the stems on the first major side of the web will be provided directly on this first major side [contested feature 3] and that the temperature of the material will be above its softening point [contested feature 4]. This is corroborated by the description as filed:

"The discrete quantities of polymeric material may be provided by extruding intermittent quantities of molten polymer onto the web ..." (page 3, lines 3-4),

"... discrete quantities of the polymeric material may be provided by extruding intermittent quantities of molten material onto the web" (page 6, lines 24-25),

"The source 53 preferably heats the polymeric material to a melting point and then deposits the melted polymeric material on the web 50 as discrete portions" (page 7, lines 26-27),

"... source 53, includes an extruder that extrudes the polymeric material under pressure onto the web 50" (page 7, lines 29-30),

"... the source 53 deposits the polymeric portions 55 in continuous lines or stripes down the web, ..." (page 8, lines 24-25),

"The source 53 of polymeric material may include a plurality of separate nozzles for application of the polymeric material to the web" (page 8, lines 30-31),

"The blade 67 cuts and disperses the polymeric material onto the web 60", (page 9, lines 9-10),

"The revolving blade 67 cuts the polymeric material, which is deposited onto the web 60 ..." (page 9, lines 12-13),

"The molten Aspun 6806 material was discharged from the die directly onto Substrate A in spots" (page 12, lines 28-29),

"The discrete amounts or spots of material were deposited directly onto Substrate B" (page 15, lines 2-3),



"... the blade sprang and threw the molten material onto a moving substrate ..." (page 18, lines 9-10).  
[emphases added]

In this context it is remarked that the extrusion of the molten polymeric material does not impose an absolute requirement as regards the temperature of the discrete quantities of that material upon contact with the web material. Claim 9 as filed simply requires that these discrete quantities be provided (on the web material) at a temperature above the softening point, which means that this feature [contested feature 4] does not constitute an intermediate generalisation.

Thus also the amendments concerning contested features 3 and 4 fulfil the requirements of Article 123(2) EPC.

2.5 In summary, the subject-matter of claim 1 of the main request finds support in the application as originally filed and the objection of the respondent is unfounded.

3. Clarity

3.1 The appellant raised two objections to the subject-matter of claim 1. It contested on the one hand the missing features relating to how the discrete quantities of the polymeric material reach the first major side of the web, and on the other hand the alleged inconsistency between the extrusion of molten polymer and the provision of this material on the web at a temperature above its softening point. Moreover, according to the appellant the softening point had no clear and unambiguous meaning because the softening point of a polymer material depended on the measuring method. As had been shown in D19 for a polymeric material used in the field of the present invention,

namely the polypropylene homopolymer Hostacom M4 U05 102943, the values for the Vicat softening were 155°C when measured according to ISO 306/A50 and 100°C when measured according to ISO 306/B50.

- 3.2 Contrary to the appellant's arguments, the board considers that the method defined by the wording of claim 1 is absolutely clear regarding the steps to be applied. Furthermore, the board does not consider that there is any inconsistency regarding the temperature of the polymer which forms discrete quantities on the surface of the web material. Claim 1 specifies that it is in a molten state when extruded and above the softening point when applied on the web material. The objection of lack of clarity of the softening point, raised in view of the absence of any measuring method in claim 1, is irrelevant since this feature was present in granted claim 9, step (b) (see point I above).

4. Insufficiency

The applicant raised an objection under Article 100(b) EPC for the first time with the statement setting out the grounds of appeal. Consequently, this is a fresh ground for opposition which can be considered only if the conditions set out in G10/91 (OJ, EPO 1993, 420) are fulfilled.

G10/91 (headnote III) stipulates:

"III. Fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patentee (respondent)."

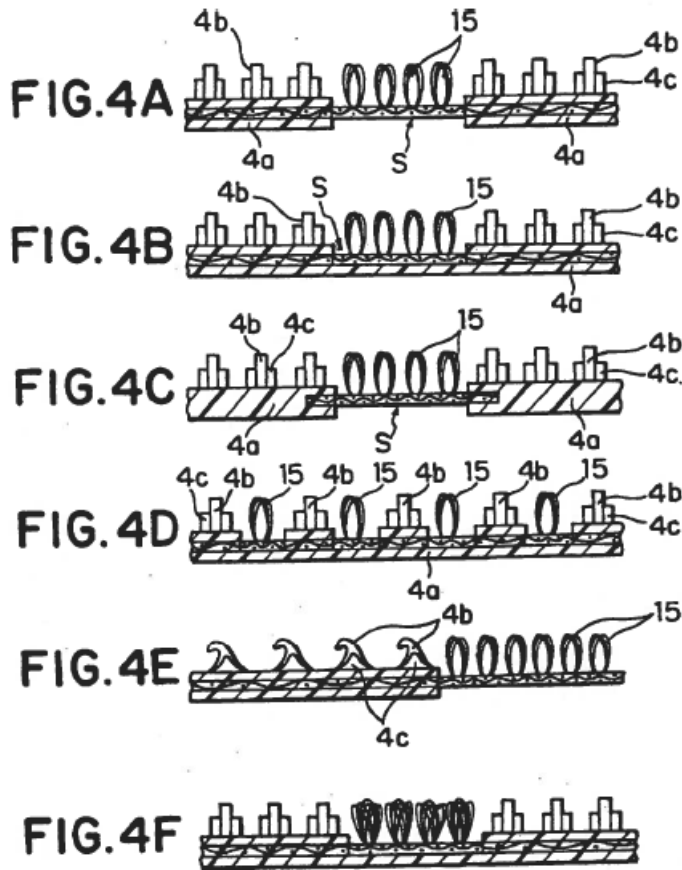
As the patentee refused during the oral proceedings before the board to consent to this fresh ground being considered in the appeal proceedings, the board, in view of G10/91 (Headnote III) did not allow the introduction of the new ground for opposition into the proceedings.

5. Novelty

5.1 The appellant objected to the novelty of claim 1 of the main request only in view of the disclosure of D5 and only regarding the first alternative in this claim for the provision of the discrete quantities of the polymer material by extruding molten polymer in intermittent quantities (see point 1.2 above).

5.2 However, for the reasons given below the board considers that the method of claim 1 is different from that disclosed in D5.

D5 discloses a method of making a web material having at least two major sides and having a plurality of stems extending from discrete regions on the first side of the web. Reference is made to column 3, line 65 to column 4, line 26, which discloses a continuous injection moulding method, and to column 4, lines 27-67, which discloses a continuous extrusion moulding method. Figures 4A to 4F (see below) illustrate the web material obtained by this method, which has two major sides (an upper and a lower), a plurality of stems (moulded hook elements 4b) extending from discrete regions on the first side of the web separated by regions S (region S contains the loop elements 15). So far the method of D5 is similar to the claimed method.

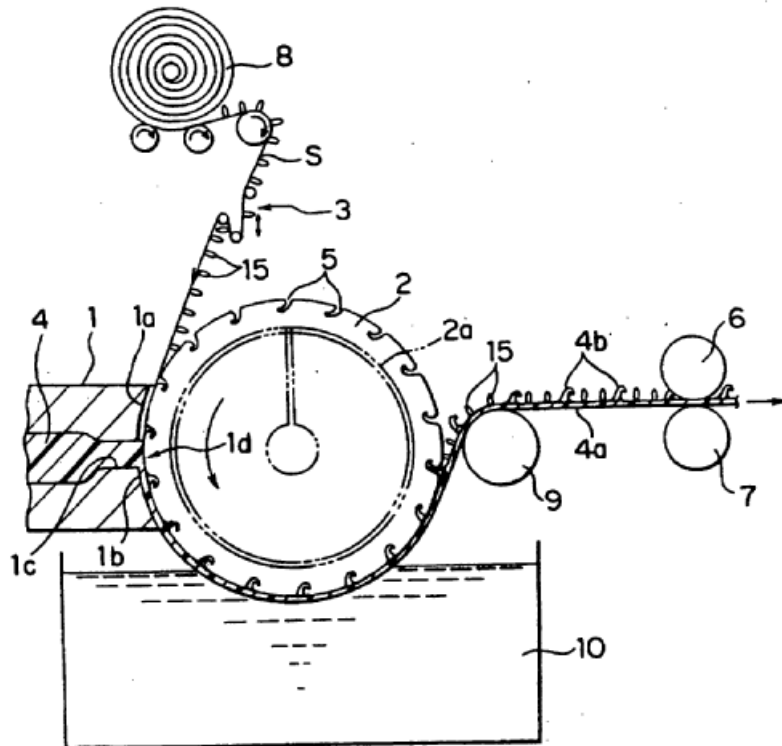


D5 (see in particular figures 4A-4F above and figure 1 below) also discloses the steps used in the claimed method, namely:

- providing a web (figures 1 and 5: element 8),
- providing a polymeric material on the web (figures 1, 4A, 4C and 4E: element 4a)
- at a temperature above its softening point (column 4, lines 3 and 32, disclose that the resin is in molten state),
- fusing the polymeric material to the web (column 7, line 26), and
- forming a plurality of stems (column 4, lines 14-22 and 37-44),

- wherein the polymeric material is provided by extruding molten polymer (column 4, lines 32-33).

FIG. 1



However, D5 does not disclose, as required by claim 1 of the patent in suit, that the polymeric material is provided:

- by extruding molten polymer in intermittent quantities so that discrete quantities of polymeric material are formed;
- (directly) on the first major side of the web which will form a plurality of stems.

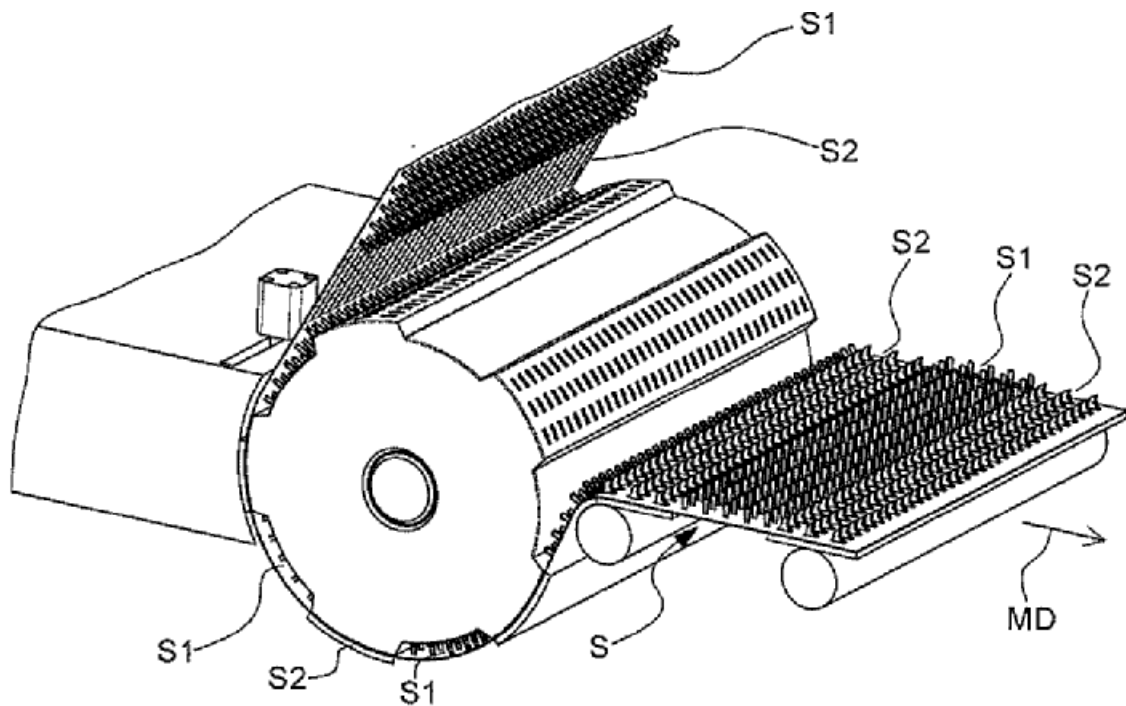
On the contrary, D5 discloses that the extrusion is continuous (column 1, line 9; column 4, lines 32-33), that the extruded molten polymer material is provided directly on the second major side of the web, is pushed through the pores of the web, and fills the hook-forming cavities, thus forming hook elements on the first major side of the web (column 4, lines 32-44):

*"... molten resin is continuously extruded from an extrusion nozzle to the gap between the die wheel and the press roller by a predetermined width and, at the same time, the coarse pile woven or knit cloth is continuously introduced between the die wheel and the molten resin extruded from the extrusion nozzle. The molten resin forms the substrate sheet in the gap by the pressing force of the press roller and, at the same time, part of molten resin reaches the circumferential surface of the die wheel through the pores of the pile woven or knit cloth to embed the pile woven or knit cloth in the molten resin and to fill the hook-element-forming cavities to form hook elements".*

In figure 4E, discrete quantities of a polymeric material are provided on the second major side of the web, not on the first major side as required by claim 1. Since these discrete quantities of the polymeric material are pushed through the pores of the web they can only form a plurality of stems on the opposite side of the web and not on the same side as required by claim 1.

5.3 The appellant argued that the extrusion of molten polymer in intermittent quantities and the formation of discrete quantities of polymeric material was implicitly disclosed in D5 in view of figure 4E. This figure illustrates a web material with hooks and loops

arranged alternately in the machine or longitudinal direction (the hooks correspond to the stems of claim 1). According to D5 (column 9, lines 18-24) in order to manufacture such a web material it is necessary to use a die wheel (see below the figure provided by the appellant with the grounds of appeal) whose circumferential surface structure is changed to meet the web construction.



The respondent did not challenge the disclosure in figure 4E of either a web material having hooks (stems) arranged alternately with loops in the machine direction or of the use of the die wheel illustrated above. It objected only to the alleged implicit disclosure of an intermittent extrusion of the molten polymer. The board concurs with the respondent that the alleged intermittent extrusion for the web material of figure 4E was incompatible with the explicit disclosure of a continuous extrusion throughout D5. As pointed out by the respondent, the intermittent extrusion was not

the only possible method to manufacture the web material of figure 4E, since there were other known ways of doing so, while maintaining the continuous extrusion of D5. These methods involved either the use of a mask (a technique commonly used in this type of manufacture and illustrated in figure 7 of the granted patent) or locally peeling off the polymeric material followed by recycling.

5.4 On the basis of the technical differences identified above, the board concludes that the subject-matter of claim 1 is novel over D5.

6. Inventive step

6.1 The appellant raised an objection of lack of inventive step of claim 1, considering D5 to represent the closest state of the art.

6.2 In the light of D5, the technical problem underlying the claimed invention is the provision of a more versatile and cost-effective method of making a web material.

There is no doubt that the provision of the polymeric material on one and the same first major side of the web, as required by the method of the present invention, is advantageous over the technique disclosed in D5. The application of the polymeric material on the back side of the web, as disclosed by D5, requires that the web must be permeable in at least some regions. By contrast, the method of claim 1 is more flexible in that it does not impose the same permeability requirement.



Furthermore, the provision of intermittent quantities of extruded molten polymer material on the first major side of the web allows the use of the same stem roll to create a large variety of patterns. In fact, these patterns do not exclusively depend on the stem roll surface, but can additionally be shaped by the way the discrete quantities of the polymeric material are distributed onto the web. In contrast, the continuous process described in D5 requires the replacement of the stem-forming roll in order to create a new pattern of patches with stems.

- 6.3 The skilled person starting from D5 and aiming at a more versatile and more cost-effective web manufacturing method would not find in the state of the art any incentive to extrude the molten polymer in intermittent quantities or to provide the polymeric material on the first major side of the web.

As pointed out above (see point 4.2), D5 discloses the continuous provision of extruded molten polymer. Furthermore it explains in column 4, lines 49-60, that the continuous provision of the molten material on the second major side of the web leads to the formation of a substrate sheet of polymeric material in which the web is embedded so as to form a "foundation structure" which facilitates the separation of the web from the stem-forming roll, avoids that the surface of the fastener becomes curved in one direction after moulding, and provides a uniform distribution of the hook elements, thus causing a high-quality surface fastener which is uniform in engaging strength. This leads to the conclusion that the skilled reader of D5 would have no reason to depart from the advantageous continuous provision of extruded molten polymeric material.

6.4 Regarding figure 4E, which discloses hooks and loops arranged alternately in the machine direction, the board concurs with the explanations of the respondent who stated that the method used to obtain this configuration did not necessarily require intermittent provision of extruded molten polymer. According to the respondent, the skilled person was aware of the common technique using a mask, which prevented polymer deposition, or removal of the formed polymer layer by peeling off. The use of a mask was disclosed in figure 7 of the patent as granted.

It is therefore concluded that the skilled person would find no incentive in D5 to go against its explicit disclosure of a continuous extrusion of the molten polymeric material in order to manufacture the web material of figure 4E.

6.5 Nor would he find such an incentive in any of D13-D16. Although these documents disclose intermittent extrusion of a polymeric material, the skilled person would not have consulted and/or combined them with D5 for the following reasons:

D13 relates to a method for making diapers with elastic bands in the leg-contracting zone so that the diaper has an improved fit or body conformity without undue pressure on the wearer (column 1, lines 6-7 and 55-60). Discrete strips of elastic ribbon are intermittently extruded onto a temperature-controlled non-stick Teflon roll which transfers the strips to the corrugating rollers. The web has adhesive applied by an applicator prior to corrugation (column 5, lines 38-49). Thus D13 relates to elastic components whereas D5 relates to fasteners which have completely different properties

and functions within the personal care industry. Moreover, D13 does not describe a method which extrudes and fuses molten polymer directly onto a web. Rather the polymer is adhered to the surface of the corrugated web by means of adhesive.

D14 relates also to the preparation of discrete lengths of elastic ribbons employed to elasticise the leg areas of a disposable diaper (abstract; column 1, lines 10-14), whereas D5 relates to the manufacture of fasteners, which again have completely different properties and functions within the personal care industry.

D15 relates to the manufacture of intermittent, discrete patterns of foam coating material onto discrete substrates or substrate areas (abstract; claim 1; column 1, lines 64-68).

D16 discloses an elastic melt extruder for extruding thoroughly plasticised material (column 1, lines 28-30) with the plastic material being ejected by an output orifice in small quantities, large quantities or intermittently, if desired (column 4, lines 30-33).

6.6 Moreover, the combination of D5 with any of D13 to D16 would not result in the claimed method, since the provision and fusion of the discrete quantities of the polymeric material on the first major side of the web are not provided by this combination.

6.7 The board is not disregarding the allegation of the appellant that the skilled person seeking to provide a more versatile method of making web material could obviously provide and fuse the discrete quantities of the polymeric material to the first major side of the

web. However, in the absence of any motivation in the art and in view of the advantages described in D5 the board sees no reason why the skilled person would deviate from the explicit disclosure of D5.

6.8 Under the present circumstances the subject-matter of claim 1 is not obvious and claim 1 involves an inventive step.

7. Dependent claims 2 to 4 are specific embodiments of main claim 1. They are *mutatis mutandis* novel and inventive.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated