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**Datasheet for the decision
of 28 July 2016**

Case Number: T 0016/13 - 3.2.06

Application Number: 05713238.3

Publication Number: 1750634

IPC: A61F13/15, B41J3/54

Language of the proceedings: EN

Title of invention:

TWO-STEP CONTACT AND NON-CONTACT PRINTING

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:

SCA Hygiene Products AB
Uni-Charm Corporation

Headword:

Relevant legal provisions:

EPC 1973 Art. 84
EPC Art. 123(2)
RPBA Art. 13(1)

Keyword:

Claims - clarity - main request (no)
Amendments - added subject-matter (yes)
Late-filed auxiliary requests - admitted (no)

Decisions cited:

Catchword:



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Boards of Appeal
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Case Number: T 0016/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 28 July 2016

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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
12 November 2012 concerning maintenance of the
European Patent No. 1750634 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
 M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (proprietor) against the interlocutory decision of the opposition division in which it found that European patent No. 1 750 634 in an amended form met the requirements of the EPC. It requested that the interlocutory decision be set aside and the patent be maintained according to a main request or, in the alternative, that it be maintained according to one of auxiliary requests 1 to 5.
- II. Opponent I and opponent II also appealed the interlocutory decision and requested that the patent be revoked.
- III. In its letter of response to the opponents' appeals, the proprietor submitted a new main request and auxiliary requests 1 to 19, replacing all its requests previously on file.
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of each of the requests on file appeared not to meet the requirement of Article 123(2) EPC.
- V. With letter of 31 May 2016, opponent II indicated that it would not be attending the scheduled oral proceedings.
- VI. With letter of 28 June 2016 the proprietor submitted a new main request and auxiliary request replacing all previous requests on file. With letter of 20 July 2016 the order of the two requests on file was reversed.

VII. Oral proceedings were held before the Board on 28 July 2016, during which the proprietor filed a new request, named auxiliary request 2.

The final requests of the parties were as follows: the appellant-proprietor requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request or the auxiliary request submitted with the letter of 28 July 2016, or the second auxiliary request filed at the oral proceedings; and the appellant-opponents requested that the decision under appeal be set aside and the European patent No. 1 750 634 be revoked.

VIII. Claim 1 of the main request reads as follows:
"A method of printing a moving substrate, comprising:
supplying a moving substrate (101) to a first converting operation (37);
contact printing at least one first graphic (80) on the moving substrate (101);
supplying the moving substrate (101) with the first graphic (80) to a second converting operation (39);
and non-contact printing at least one second graphic (82) on the moving substrate (101);
wherein the second converting operation (39) produces disposable absorbent garments, and the moving substrate forms an outer cover (20) of the garments, the outer cover (20) defining a width; and
wherein the first graphic (80) spans at least 60% of the width of the outer cover (20) and is visible to the naked eye, the second graph (82) being positioned within the center third of the width of the outer cover (20) and being visible to the naked eye, wherein the method comprises:

supplying a moving first substrate to a first printing operation, the first moving substrate comprising a film;

contact printing the at least one first graphic (80) on the first moving substrate in the first printing operation using a gravure roll printer or flexographic printer;

laminating a second moving substrate to the first moving substrate to form an outer cover (20), the second moving substrate comprising a nonwoven web and the outer cover (20) defining a width;

supplying the outer cover (20) to a second printing operation;

non-contact printing the at least one second graphic (82) on the outer cover (20) in the second printing operation using a wax jet printer, ink jet printer, bubble jet printer, or laser jet printer; and

joining the outer cover (20) with an absorbent and a liner to produce an absorbent article."

Claim 1 of auxiliary request 1 reads as follows:

"A method of printing a moving substrate, comprising:

supplying a moving substrate (101) to a first converting operation (37);

contact printing at least one first graphic (80) on the moving substrate (101);

supplying the moving substrate (101) with the first graphic (80) to a second converting operation (39);

and non-contact printing at least one second graphic (82) on the moving substrate (101);

wherein the second converting operation (39) produces disposable absorbent garments, and the moving substrate forms an outer cover (20) of the garments, the outer cover (20) defining a width; and

wherein the first graphic (80) spans at least 60% of the width of the outer cover (20) and is visible to the

naked eye, the second graphic (82) being positioned within the center third of the width of the outer cover (20) and being visible to the naked eye, wherein the method comprises:

laminating a first substrate comprising film to a second substrate comprising a nonwoven to form said outer cover (20), the outercover (20) defining a film side and a nonwoven side opposite the film side;
supplying the outer cover (20) to said first converting operation and contact printing said at least one first graphic (80) on the nonwoven side,
supplying the outer cover (20) to said second converting operation, the second converting operation combining the outer cover (20) with an absorbent assembly to form the absorbent garment;
and non-contact printing said at least one second graphic (82) on the nonwoven side in the second converting operation."

Claim 1 of auxiliary request 2 reads as for claim 1 of auxiliary request 1 except that the method step commencing 'supplying the outer cover (20) to said first converting operation...' now reads as follows:
"supplying the outer cover (20) to said first converting operation and contact printing said at least one first graphic (80) on the nonwoven side in the first converting operation".

IX. The proprietor's arguments may be summarised as follows:

As regards claim 1 of the main request, this did not suffer from a lack of clarity. As could be seen from the figures of the patent, the absorbent article of claim 20 was clearly embodied as an absorbent garment, such that the correspondence between these two expressions was evident.

As regards auxiliary request 1, the subject-matter of claim 1 met the requirement of Article 123(2) EPC, having basis in claims 1, 6 and 20 as filed. The first converting operation was disclosed to be the same thing as the printing process, as indicated on page 6, line 28; page 7, line 21; and page 8, line 7. It was furthermore evident that the expression 'supplying the outer cover to said first converting operation and contact printing said ... graphic' in claim 1 clearly indicated that the printing occurred in the first converting operation. Claim 20 as filed also supported this interpretation since here a printing process was indicated to be where the contact printing occurred. The subject-matter of claim 1 of auxiliary request 2 overcame the objection under Article 123(2) EPC raised against auxiliary request 1 through introduction of the limitation that the contact printing occurred in the first converting operation. Page 6, lines 28 to 29 also supported the interpretation that the first converting operation was solely a printing process.

- X. The opponents' arguments may be summarised as follows: Claim 1 of the main request did not meet the requirements of Article 84 EPC. It was at least unclear whether the absorbent article originally disclosed in claim 13, and now included in claim 1, corresponded to the absorbent garment included in claim 1, or whether this was indeed a different feature. As regards auxiliary request 1, there was no direct and unambiguous disclosure of the first converting operation being the printing process originally disclosed in claim 20. The subject-matter of claim 1 thus failed to meet the requirement of Article 123(2) EPC. In auxiliary request 2, this objection was not overcome through the limitation that the contact printing

occurred in the first converting operation, since the wording left the inclusion of further undefined processes in the first converting operation open.

Reasons for the Decision

1. Main request

1.1 *Article 84 EPC*

Claim 1 is not clear, contrary to the requirements of Article 84 EPC.

1.1.1 The subject-matter of claim 1 comprises a combination of the features from independent claims 1 and 13 as originally filed. In these two originally filed independent claims different terminology is used to define what the proprietor suggests should be interpreted as common physical features of the claimed method; the different terminology however does not allow this correspondence to be made. An example of this in claim 1 is:

- disposable absorbent garments, in lines 11 to 12 of claim 1 and from claim 1 as filed; and
- an absorbent and a liner to produce an absorbent article, in line 29 of claim 1 and from claim 13 as filed.

A clear link between these two features does not exist *inter alia* because the features define different physical structures i.e. a garment (an item of clothing) which is both disposable and absorbent on the one hand, and an article (a very broad expression covering almost any physical item) comprising an absorbent and a liner. Equating these two features to

be one and the same feature by way of combining claims 1 and 13 as originally filed (which were notably independent claims) thus leads to a lack of clarity as to exactly what the claimed absorbent item is and therefore in what way the absorbent garment in the first part of the claim can be regarded as equatable to the absorbent article in the second part of the claim.

1.1.2 The proprietor's referral to the figures in order to clarify this is not persuasive. Whilst these clearly show various embodiments of absorbent garments, they do not provide a clear link between the claimed expressions 'an absorbent and a liner (of an) absorbent article' and 'a disposable absorbent garment'.

1.1.3 Claim 1 thus lacks clarity (Article 84 EPC) at least for this reason. The main request is thus not allowable.

2. Auxiliary request 1

2.1 *Article 123(2) EPC*

The subject-matter of claim 1 fails to meet the requirement of Article 123(2) EPC.

2.1.1 The subject-matter of claim 1 has basis, according to the proprietor, in a combination of claims 1, 6 and 20 as originally filed. It is noted that claim 1 and claim 20 as filed were independent claims with no direct and unambiguous link connecting the features of the two claims. It is also noted that claim 20 as filed comprised the feature 'supplying the outer cover (20) to a printing process and contact printing at least one first graphic ...' which has been amended when incorporated into the present claim 1 to read

'supplying the outer cover (20) to said first converting operation and contact printing said at least one first graphic ...'. There is no direct and unambiguous basis in the application as filed for the 'printing process' disclosed in claim 20 as filed to be equated with the 'first converting operation'.

2.1.2 As regards the proprietor's argument that the first converting operation is in fact disclosed to be the same thing as the printing process, this is not persuasive. Whilst this is indeed one possible, and even disclosed (see page 6, line 28; page 7, line 21; page 8, line 7), interpretation of the first converting operation, this is not the only possible interpretation. The first converting operation as claimed is not limited to just being a printing process and can include any number of additional, unspecified, processes (such as folding or laminating). The direct substitution of the 'printing process' of claim 20 by the 'first converting operation' in the present claim thus has no direct and unambiguous basis in the originally filed documents.

2.1.3 The proprietor's contention that the wording 'supplying the outer cover to said first converting operation and contact printing said ... graphic' in claim 1 clearly indicated that the printing occurred in the first converting operation is not accepted. The above cited wording of the claim allows at least two equally valid interpretations, either: that the contact printing takes place as part of the first converting operation; or that the printing process takes place after the first converting operation has been completed. Even though the description in several places indicates that the first converting operation may comprise a printing process (see citations in point 2.1.2), this is not an

unambiguous disclosure of this being the only valid interpretation; the alternative interpretation is equally valid. Furthermore, even though not decisive for this issue, the features in claim 1 regarding the non-contact printing process clearly indicate that the printing takes place in the second converting operation. This clarity is lacking as regards the contact printing and the first converting operation.

2.1.4 The proprietor's argument that claim 20 as filed supported the interpretation that the first converting operation was solely the contact printing process is not accepted. The Board can accept that the printing process of claim 20 indeed must be where the contact printing of a first graphic takes place, not least due to the expression 'printing process' including the verb 'printing'. This direct link is however not offered when changing the wording of 'printing process' to 'first converting operation' as has occurred in claim 1. Such a change of terminology, and reading of the first converting operation as directly equatable with the printing process, requires further interpretation of the expressions for which, as identified in points 2.1.2 and 2.1.3 above, no basis exists. In summary there is no direct and unambiguous basis disclosed to the skilled person for the interpretation of the first converting operation as the printing process, either explicitly or implicitly, using common general knowledge in the application as filed.

2.1.5 The subject-matter of claim 1 therefore fails to meet the requirement of Article 123(2) EPC. As a consequence the request is not allowable.

3. Auxiliary request 2

3.1 *Admittance (Article 13(1) RPBA)*

3.1.1 Article 12(2) of the Rules of Procedure of the Boards of Appeal (RPBA) specifies that the statement of grounds of appeal and reply must contain the party's complete case. After filing the grounds of appeal or reply, any amendment to a party's case may be admitted and considered at the Board's discretion, which is set out in Article 13(1) RPBA, such discretion being exercised *inter alia* in view of the need for procedural economy. As is established case law of the Boards of Appeal, such procedural economy implies that amended requests should at least be *prima facie* allowable in order to be admitted.

3.1.2 The proprietor filed auxiliary request 2 during oral proceedings. The request thus represented a change to the respondent's complete case as defined in Article 12(2) RPBA) and it is within the Board's discretion to decide whether to admit the request under Article 13(1) RPBA.

3.1.3 In the present request, in comparison to claim 1 of auxiliary request 1, it has been specified that the contact printing of the first graphic takes place in the first converting operation. However, this amendment does not overcome the objection under Article 123(2) EPC found prejudicial to the subject-matter of claim 1 in auxiliary request 1. The indication introduced into claim 1 that the printing takes place in the first converting operation does not exclude further processes from still being included therein, such that the direct equating of the first converting operation with solely the printing process, as is required through the combination of claims 1 and 20 as filed, has no direct

and unambiguous basis.

- 3.1.4 The proprietor's reference to page 6, lines 28 to 29 in support of the first converting operation being solely a printing process is not accepted. As found in point 2.1.2 above, whilst the cited passage of the description does indeed indicate that the first converting operation may be a traditional contact printing process, this limitation has not been introduced into claim 1; the introduced limitation is that the contact printing of the first graphic takes place in the first converting operation, which allows a broader interpretation of the first converting operation in which further processes may also be comprised therein. This incompatibility when combining claims 1 and 20 as filed is further underlined by these claims *prima facie* covering very different embodiments of the invention, *inter alia* with claim 1 printing just a moving substrate, claim 20 carrying out a laminating process prior to the first printing operation.
- 3.1.5 It thus follows that the subject-matter of claim 1 at least *prima facie* fails to meet the requirement of Article 123(2) EPC.
- 3.1.6 Therefore, the subject-matter of claim 1 is not *prima facie* allowable, which would be necessary for fulfilling the need for procedural economy and consequently admitting the request into the proceedings. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request into proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated