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**Datasheet for the decision
of 17 January 2017**

Case Number: T 0420/13 - 3.2.06

Application Number: 03719897.5

Publication Number: 1534203

IPC: A61F13/15, B26F1/44

Language of the proceedings: EN

Title of invention:

CROSS-MACHINE-DIRECTION NESTED ABSORBENT PADS WITH MINIMAL
WASTE GEOMETRIES

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:

THE PROCTER & GAMBLE COMPANY

Headword:

Relevant legal provisions:

EPC 1973 Art. 56

EPC Art. 84

Keyword:

Claims - clarity (yes)

Inventive step - (yes)

Decisions cited:

T 0190/03, T 0623/97, T 1072/07

Catchword:



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Case Number: T 0420/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 17 January 2017

Appellant: KIMBERLY-CLARK WORLDWIDE, INC.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 December 2012 concerning maintenance of the
European Patent No. 1534203 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
E. Kossonakou

Summary of Facts and Submissions

- I. An appeal was filed by both the opponent and the patent proprietor against the interlocutory decision of the opposition division in which it found that European patent No. 1 534 203 in an amended form met the requirements of the EPC.
- II. The appellant/opponent (hereafter 'opponent') requested that the decision be set aside and the patent be revoked. With its response to the opponent's appeal, the appellant/patent proprietor (hereafter 'proprietor') requested that the decision be set aside and the patent be maintained according to a main request, alternatively that it be maintained according to one of auxiliary requests 1 to 3.
- III. The following documents, referred to by the opponent in its grounds of appeal, are relevant to the present decision:
- D1 JP-U-2 118525
 - D3 JP-U-60 86510
 - D4 US-B1-6 319 347
 - D5 US-A-6 139 004
 - D6 US-A-5 556 504
 - D7 US-A-5 224 405
 - D8 US-A-5 104 116
 - D9 US-A-4 608 115
 - D10 US-A-5 025 910
 - D11 WO-A-01/00123
- 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 cited prior art appeared not to disclose the rotation

of alternate pads.

- V. With letter of 8 December 2016, the proprietor filed a replacement main request, replacement auxiliary requests 1 to 3 and a new auxiliary request 4.
- VI. Oral proceedings were held before the Board on 17 January 2017, during which the proprietor withdrew all requests save for auxiliary request 3.
- VII. The final requests of the parties were as follows:

The proprietor requested that the decision under appeal be set aside and the patent be maintained on the basis of the claims of auxiliary request 3 as filed with its letter dated 8 December 2016 and the amended description pages filed during the oral proceedings of 17 January 2017.

The opponent requested that the decision under appeal be set aside and the European patent No. 1 534 203 be revoked.

- VIII. Claim 1 of auxiliary request 3 reads as follows:

"A method of making absorbent pads (10) having a longitudinally asymmetric shape between a back portion (15) and front portion (14) thereof and conveying said pads (10) directly to an in-line manufacturing process wherein individual pads (10) are incorporated into a non-symmetrical disposable consumer absorbent article, said method comprising:
delivering a supply of an absorbent web material (16) in a machine-direction flow;
cutting the absorbent web material (16) in a cross-direction (22) to form a repeating nested pattern of

identically shaped and oppositely longitudinally oriented absorbent pads (10), the pads (10) disposed longitudinally in the cross-direction (22) of the absorbent web (16);

wherein the absorbent pads (10) are longitudinally asymmetric and nested such that the back portion (15) of one pad (10) is oriented towards the front portions (14) of immediately adjacent pads (10) and adjacent nested pads (10) share defining cut lines such that wastage of the absorbent web material (16) between the nested pads (10) is minimized;

wherein alternate pads (10) are rotated or flipped so that all of the pads (10) are oriented longitudinally in the same direction; and

wherein the in-line process where the individual pads are incorporated into an article is a cross-directional process line, the absorbent article having a chassis which is not symmetrical, the pads being rotated or flipped so that all the pads are cross-directionally oriented longitudinally in the same direction."

IX. The proprietor's arguments relevant to the decision may be summarised as follows:

The term 'chassis' was claimed broadly. It could be interpreted as consisting of those components onto which the absorbent pad was placed or it could further comprise additional components added after the absorbent pad had been placed. This did not result in the term and thus the claim lacking clarity.

Regarding Article 56 EPC, the claim could only be interpreted in such a way that the individual absorbent pads were rotated prior to incorporation in the absorbent article. Whilst it could be accepted that the problem to be solved was to provide the finished

article shown in D3, D3 gave no information at all about how the article therein was manufactured and certainly provided no hint to the rotation of every other pad, nor did the common general knowledge of the skilled person help in this respect.

- X. The opponent's arguments relevant to the decision may be summarised as follows:

Claim 1 failed to meet Article 84 EPC as it was not clear which features of the absorbent article were comprised in the chassis. These could be either the whole absorbent article other than the absorbent pad, or those portions of the absorbent article in position before the absorbent pad was introduced.

As regards Article 56 EPC, the scope of claim 1 covered step h - i.e. the rotating of alternate pads - not only prior to their being incorporated into the absorbent article but also after their incorporation. When starting from D3 and wishing to solve the objective technical problems (which were how to produce the finished article in D3 and then to package it), the skilled person would reach the claimed solution from his common general knowledge, particularly since pieces of apparatus for rotating or flipping components were well known from any of D4 to D11. T190/03, T623/97 and T1072/07 provided support for the subject-matter of claim 1 lacking an inventive step. The subject-matter of claim 1 also lacked an inventive step when starting from D1, which had a disclosure similar to that of D3 (see Fig. 3).

Reasons for the Decision

Auxiliary request 3

1. *Article 84 EPC*

1.1 The expression 'the absorbent article having a chassis which is not symmetrical' in claim 1 is found not to introduce a lack of clarity into the claim. Even though a precise definition of 'chassis' is not given in the patent, it is evident to the skilled person, particularly from claim 1 and para. [0042] of the patent, that the chassis is that part of the supporting structure onto which the pad is placed and which, as a consequence of its asymmetry, requires the rotation of the pad.

1.2 The opponent's argument, that the chassis could be either

- those portions of the absorbent article in position before the absorbent pad is introduced, or
- these portions of the absorbent article with the addition of other portions added after the absorbent pad

is not accepted as introducing a lack of clarity. The Board concurs with the opponent that either of these two interpretations for the supporting structure of the chassis is possible; it is not however accepted that this *per se* introduces a lack of clarity in the claim. The possibility of two interpretations for what the chassis comprises simply indicates a broad scope for the claim rather than a lack of clarity. Both of the interpretations proposed by the opponent can be understood and are indeed possible in the context of the non-symmetrical chassis, in particular in the

context of the claim which requires rotation of alternate absorbent pads such that they finish the correct way round in the final product. This however does not result in the conclusion that the claim is unclear, rather solely that the claim's scope is broad and covers these two possibilities.

1.3 Claim 1 is thus found to be clear and to meet Article 84 EPC.

2. *Inventive step (Article 56 EPC 1973)*

2.1 D3 in combination with the common general knowledge of the skilled person

2.1.1 As also accepted by both parties, D3 is found to present the most promising starting point for considering inventive step. D3 discloses the following features of claim 1 (the reference signs in parentheses referring to D3):

a. A method of making absorbent pads (4, page 4, line 29) having a longitudinally asymmetric shape (page 4, lines 2 to 3) between a back portion (6) and front portion (5) thereof and wherein

c. individual pads (4) are incorporated into a non-symmetrical disposable consumer absorbent article (1, see Fig. 1),

d. said method comprising: delivering a supply of an absorbent web material (see Fig. 4) in a machine-direction flow (implicit that the web depicted in Fig. 4 is supplied in a MD flow);

e. cutting the absorbent web material (page 4, lines 29) in a cross-direction (see Fig. 4) to form a repeating nested pattern of identically shaped and oppositely longitudinally oriented absorbent pads (4)

f. the pads (4) disposed longitudinally in the

- cross-direction of the absorbent web (see Fig. 4);
- g. wherein the absorbent pads (4) are longitudinally asymmetric (Fig. 4, page 4, lines 2 to 3) and nested such that the back portion (6) of one pad (4) is oriented towards the front portions (5) of immediately adjacent pads (4, cf. Figs. 1 and 4) and adjacent nested pads (4) share defining cut lines (see at least front and rear edges of pads in Fig. 4) such that wastage of the absorbent web material between the nested pads (4) is minimized (see page 5, lines 1 to 2); and
 - j. the absorbent article having a chassis (see Fig. 1) which is not symmetrical.

2.1.2 The subject-matter of claim 1 thus differs from D3 in further including the following features:

- b. conveying said pads directly to an in-line manufacturing process
- h. wherein alternate pads are rotated or flipped so that all of the pads are orientated longitudinally in the same direction,
- i. wherein the in-line process where the individual pads are incorporated into an article is a cross-directional process line,
- k. the pads being rotated or flipped so that all the pads are cross-directionally oriented longitudinally in the same direction.

2.1.3 The opponent's argument that the scope of claim 1 covered by step h (referred to by the parties as the claim construction) - i.e. the rotating of alternate pads - included the possibility not only of rotation prior to their being incorporated into the absorbent article but instead possibly after their incorporation, is not accepted. It is noted that throughout the claim,

the pads are addressed as discrete items (e.g. 'conveying said pads directly'; 'individual pads are incorporated'; 'alternate pads are rotated or flipped') such that there is nothing in the claim which suggests anything but the pads alone being rotated or flipped. This is also consistent in features h and k which address the rotating or flipping of the pads alone, with no suggestion of the rotation or flipping occurring after incorporation of the pads into the absorbent article. This is further supported with the method steps essentially following chronologically, with the absorbent web material being supplied, cut to form asymmetric absorbent pads, alternate pads being rotated or flipped and finally the step of the 'individual pads' being 'incorporated into an article' being detailed as an in-line process which is a cross-directional process line.

The Board thus finds that the skilled person reading claim 1 would understand the claim such that the rotation of alternate pads occurs only prior to their incorporation into the absorbent article.

- 2.1.4 The features differentiating claim 1 from D3 address two separate objective technical problems, the first, relating to feature b, being 'how to manufacture the absorbent pads more efficiently'. The objective problem relating to features h, i and k may be seen as 'how to move nested non-symmetrical absorbent pads into non-symmetrical chassis'.
- 2.1.5 As regards a solution to the first objective problem, it is noted that only two possible *modi operandi* are available to the skilled person, both of which would be immediately evident: direct conveying of the pads to the in-line manufacturing process; or, intermediate

storage of the pads prior to introduction to the process. With just these two options available, the selection of either one of these can not be credited with involving an inventive step for the skilled person wishing to solve the objective problem.

- 2.1.6 As regards the second objective technical problem, the Board finds that the common general knowledge of the skilled person would not obviously provide a hint at least to rotating or flipping alternate pads as found in feature h of claim 1. No document has been cited by the opponent which suggests such a step and no such step is discernible or derivable from D3. In this respect it is noted that the rotating or flipping of alternate absorbent pads is carried out in order to orient them all longitudinally in the same direction which beneficially allows direct incorporation of the pads into the non-symmetrical absorbent articles, thus solving the objective problem.
- 2.1.7 The opponent's argument that D4 to D11 each disclosed pieces of apparatus for rotating components does not render the subject-matter of claim 1 obvious. That these documents disclose such pieces of apparatus is not contested; what is however not accepted is that the chosen solution of rotating alternate absorbent pads is obvious. The opponent was unable to show any of D4 to D11 disclosing the rotating or flipping of alternate components, rather simply disclosing general pieces of apparatus for rotating components without any limitation to rotating just every other one.
- 2.1.8 Whilst the opponent had offered a further inventive step argument concerning packaging of the articles as the second objective problem, this was only argued with respect to the interpretation of the absorbent pads

being rotated after their incorporation into the absorbent article found, in point 2.1.5 above, not to be included in the scope of claim 1. With the only valid interpretation of claim 1 being rotation of the absorbent pads prior to their incorporation into the absorbent article, the alleged advantage of improved packaging was not solved by the subject-matter of the claim. The improved packaging can thus not be seen as a possible objective technical problem.

- 2.1.9 The opponent's reference to three decisions of the Boards of Appeal in support of its arguments do not change anything.

In T190/03 the skilled person was faced with the problem of wishing to navigate its way through subtitle pages and having several possible push-button combinations for achieving this, the chosen combination being an arbitrary selection and thus being obvious. This has no bearing on the present case in which no arbitrary selection of possible solutions is made since there is no suggestion at all from the prior art of the claimed solution of rotating alternate absorbent pads.

T623/97 found that a technical problem leading the skilled person to the solution in a step-by-step fashion did not involve an inventive step. This decision however has no bearing on the present case in which such a step-by-step guidance to the claimed solution is absent.

Finally decision T1072/07 also has no direct bearing on the present case, that decision having concerned a selection from just two well-known and documented possibilities, the present case conversely lacking any prior art document, neither D3 nor any of D4 to D11,

disclosing the claimed rotation or flipping of alternate absorbent pads.

2.1.10 The subject-matter of claim 1 thus involves an inventive step when starting from D3, wishing to solve the objective technical problem, and considering the common general knowledge of the skilled person as known e.g. from D4 to D11.

2.2 D1 in combination with the common general knowledge of the skilled person

2.2.1 An inventive step objection to the subject-matter of claim 1 with D1 as the starting point was very briefly touched upon by the opponent in its letter of grounds of appeal, stating that D1, particularly with reference to Fig. 3, had a disclosure similar to that of D3. This being the only basis, even if D1 were taken to indeed disclose all those features of claim 1 found to be known from D3, for the same reasons as those presented in points 2.1.5 to 2.1.9 above concerning the use of D3 as the closest prior art, the subject-matter of claim 1 would still involve an inventive step when starting from D1 and combining with the common general knowledge of the skilled person.

2.3 The subject-matter of claim 1 thus involves an inventive step over the document combinations and arguments presented by the opponent. The requirement of Article 56 EPC 1973 is therefore met.

2.4 The opponent had no outstanding objections to the adapted description filed during the oral proceedings. To this the Board also has no objections.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the European patent on the basis of the following documents:
 - claims: 1 to 39 of auxiliary request 3 filed with the letter of 8 December 2016;
 - description: pages 2, 4, 5 and 6 of the patent specification and pages 3, 7 and 8 as filed at the oral proceedings before the Board on 17 January 2017; and
 - figures: 1 to 5 of the patent specification.

The Registrar:

The Chairman:



P. Martorana

M. Harrison

Decision electronically authenticated