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**Datasheet for the decision  
of 9 December 2016**

**Case Number:** T 0751/14 - 3.3.09

**Application Number:** 05018519.8

**Publication Number:** 1637320

**IPC:** B32B27/20, B32B38/06, A61F13/15

**Language of the proceedings:** EN

**Title of invention:**

Method for producing a composite elastic web and product  
obtained by the method

**Patent Proprietor:**

Tredegear Film Products Corporation

**Opponent:**

The Procter & Gamble Company

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 83, 100(c), 123(2)  
RPBA Art. 13(1)

**Keyword:**

Late-filed request - admitted (yes)

Amendments - extension beyond the content of the application  
as filed (no)

Sufficiency of disclosure (yes)

Novelty (yes)

Inventive step (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0751/14 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 9 December 2016**

**Appellant:** The Procter & Gamble Company  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
20 January 2014 maintaining European patent  
No. 1637320 in amended form.

**Composition of the Board:**

**Chairman** W. Sieber  
**Members:** J. Jardón Álvarez  
F. Blumer

## Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the interlocutory decision of the opposition division that European patent No. 1 637 320 as amended met the requirements of the EPC.
- II. The opponent had requested revocation of the patent in its entirety on the grounds of Article 100(a) (lack of novelty and inventive step), (b) and (c) EPC.

The documents cited during the opposition proceedings included:

D3: WO 2004/058118 A1.

- III. The opposition division held that claims 1 and 2 of auxiliary request 4 filed on 3 December 2013 during the oral proceedings met the requirements of the EPC. Claim 1 of this request read as follows:

"1. A method for producing a composite web comprising:

- placing a nonwoven web (31) and a perforated film (30) in face to face relationship;
- stretching the nonwoven web (31) and the perforated film (30) together while they are in face to face relationship and in an unbonded state in an amount sufficient to induce breakage of inter fiber bonds and induce softness into the nonwoven web; wherein the stretching step comprises passing the nonwoven web (31) and the perforated film (30) into a nip formed by a pair of intermeshing gear rollers (33, 34) and

- thermal bonding the nonwoven web to the perforated film to form a composite web, wherein the bonding step occurs during the stretching step and wherein bonding takes place in the nip between two of the intermeshing gear rollers (33, 34) wherein said intermeshing gear rollers (33, 34) are heated.

Claim 2 was a dependent claim.

IV. The opposition division's position can be summarised as follows:

- The amendments made fulfilled the requirements of Article 123(2) EPC.
- The claimed subject-matter was novel over D3, since D3 failed to disclose the feature that the thermal bonding took place in the nip between two of the intermeshing gear rollers.
- The disclosure of D3 represented the closest prior art. The objective technical problem solved by the patent was to provide a method for producing a composite web, whereby the bonding and activation were conducted in a simple and efficient way. The solution according to claim 1, namely the thermal bonding of the web and the film in the nip, was not suggested by D3 or by any other document in the proceedings.
- Lastly, the invention was sufficiently disclosed, because the stretching method to induce softness in a web was not only described in the patent specification but also known from the prior art.

V. On 31 March 2014 the opponent (in the following: the appellant) lodged an appeal and requested that the decision under appeal be set aside and that the patent be revoked. The statement setting out the grounds of appeal, filed on 27 May 2014, included the following document:

D5: US 6 776 947 B2.

VI. With letter dated 30 September 2014, the patent proprietor (in the following: the respondent) filed its reply, including auxiliary requests 1 and 2. Because D5 seemed relevant enough to be taken into consideration and to ensure two levels of jurisdiction in relation to D5, the respondent requested that the case be remitted to the opposition division. If the board decided to take D5 into consideration without remitting the case, the respondent requested that the appeal be dismissed (main request); subsidiarily that the patent be maintained on the basis of the claims of one of the two auxiliary requests.

VII. By letter dated 6 November 2014 the appellant requested that the case not be remitted to the opposition division.

VIII. In a communication dated 24 August 2016 the board indicated the points to be discussed during the oral proceedings. It also gave its preliminary view that it seemed appropriate to deal with D5 during the appeal proceedings.

IX. On 4 November 2016 the appellant filed further arguments in support of its request.

- X. On 9 December 2016 oral proceedings were held before the board. After the board had decided that the main request before the opposition division was not allowable, the respondent filed a new main request to replace its previous main request. Moreover it withdrew its request for remittal.

Claim 1 of the main request as filed during the oral proceedings, now the only request relevant for this decision, reads as follows (amendments over claim 1 as maintained by the opposition division are indicated in strike-through and in bold):

- "1. A method for producing a composite web comprising:
- placing a nonwoven web (31) and a perforated film (30) in face to face relationship;
  - stretching the nonwoven web (31) and the perforated film (30) together while they are in face to face relationship and in an unbonded state in an amount sufficient to induce breakage of inter fiber bonds and induce softness into the nonwoven web; wherein the stretching step comprises passing the nonwoven web (31) and the perforated film (30) into a nip formed by a pair of intermeshing gear rollers (33, 34) and
  - thermal bonding the nonwoven web to the perforated film to form a composite web, wherein the bonding step occurs ~~during~~ **simultaneously with** the stretching step and wherein bonding takes place in the nip between two of the intermeshing gear rollers (33, 34) wherein said intermeshing gear rollers (33, 34) are heated."

Claim 2 is a dependent claim.

XI. The arguments of the appellant, insofar as they are relevant for the present decision, may be summarised as follows:

- The main request should not be admitted into the proceedings as it had been filed late without good reason and introduced new issues into the proceedings.
- The granted claims were not supported by the application as filed. There was no basis for many of the amendments made during examination and there was also no support for the amendments made during opposition. In particular, there was no support in the application as filed for the "stretching" step, for the concept of "inducing breakage of inter-fiber bonds" and for the step of placing a non-woven web and a perforated film in a face-to-face relationship. Moreover, the amendments made before the opposition division led to several unallowable intermediate generalisations. Lastly, the amendment made during the oral proceedings before the opposition division to paragraph [0045] of the patent specification also added subject-matter.
- The patent was not sufficiently disclosed, because there was no way to determine whether softness had been induced into a non-woven web and because the patent did not disclose how to induce breakage of inter-fibre bonds, as opposed to possibly breaking bonds or fibres.
- The disclosure of both D3 and D5 was novelty-destroying for the claimed subject-matter. If the



board acknowledged novelty, the claimed subject-matter lacked inventive step starting from either D3 or D5 as closest prior-art document.

XII. The relevant arguments of the respondent may be summarised as follows:

- The main request should be admitted into the appeal proceedings. The objection to the bonding step occurring "during" the stretching step, as opposed to "simultaneously" with it, had been filed only shortly before the oral proceedings and had been thoroughly discussed for the first time during the oral proceedings. Thus, the filing of the new main request had been occasioned by the development of the case which had led to the board's conclusion that claim 1 as maintained by the opposition division was not allowable under Article 123(2) EPC.
- Concerning the amendments, it was clear from the specification as filed that the terms "activation" and "stretching" were used interchangeably, meaning that "activation" referred to a process of "stretching" as defined in paragraphs [0003] and [0004]. All amendments were also supported by the original disclosure, taking into account the technical information that the skilled person would have derived from its content considered in its entirety.
- The requirements of sufficiency were met. Claim 1 contained clear technical instructions as to what to do and how to achieve the desired softness. Moreover, breakage of each inter-fibre bond did not need to be detected at all, because a person

skilled in the art would know that all materials have a stress-strain relationship in which the amount of force needed to stretch the material is related to the degree that the material stretches.

- D3 did not disclose the step of stretching the non-woven web and the perforated film together while they were in a face-to-face relationship and an unbonded state. It also did not disclose that thermal bonding of both webs occurred simultaneously with the stretching step. Thermal bonding of the non-woven web to the perforated film occurring simultaneously with a stretching step was not known from D5 either. The separate layers of the film composite according to D5 were already bonded together before they entered into the nip between two of the intermeshing gear rollers.
- D3 represented the closest prior-art document. The claimed method was a non-obvious alternative to the method of D3 for producing soft products. There was no hint in the prior art to the process steps as now claimed. In fact, D5 was directed to increasing the film water-vapour transmission rate and actually led away from the claimed invention.

XIII. The appellant requested that the decision under appeal be set aside and that European patent No. 1 637 320 be revoked.

The respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of the claims of the main request as filed on 9 December 2016 during the oral proceedings before the board, or, subsidiarily, on the basis of the claims of either of auxiliary requests 1 or 2, both filed on

30 September 2014 with the reply to the grounds of appeal.

## **Reasons for the Decision**

### MAIN REQUEST

#### 1. *Admission of the main request*

1.1 The respondent filed this request during the oral proceedings, after the board had decided that the then pending main request did not fulfil the requirements of Article 123(2) EPC, i.e. at a late stage of the proceedings.

1.2 Requests filed at such a late stage are admitted into the appeal proceedings only if there are sound reasons for filing them so late, as may be the case where amendments are occasioned by developments during the proceedings. Moreover the amendments must be *prima facie* clearly allowable, and their introduction must not constitute an abuse of procedure (see Case Law of the Boards of Appeal of the EPO, 8th edition 2016, Chapter IV.E.4.4).

1.3 In the present case the board decided to admit the main request into the proceedings essentially because the amendment was caused by the objection of the appellant that the wording "the bonding step occurs during the stretching step" was not supported by the application as filed, an objection raised for the first time shortly before the oral proceedings, namely with the appellant's reply to the summons. Basically, this issue was discussed thoroughly for the first time at the oral proceedings before the board.

1.4 It became clear during the discussion that in the application as filed the wording "during" and "simultaneously" were not interchangeable. The amendment in the claim overcame this objection and did not give rise to any difficulty or delay. Moreover, no abuse of the proceedings could be seen in the filing of this request.

1.5 Under these circumstances, the main request was admitted into the proceedings despite its late submission (Article 13(1) RPBA).

2. *Amendments (Articles 100(c) and 123(2) EPC)*

2.1 During examination and opposition proceedings the claims were amended several times, so that the claimed subject-matter was limited to a preferred embodiment, namely the method for producing a composite web corresponding essentially to the embodiment shown in figure 3 of the application as filed, wherein activation and thermal bonding of the non-woven web (31) and the perforated film (30) are carried out simultaneously in the nip of the intermeshing gear rollers (33, 34).

2.2 The appellant objected to the granted claims under Article 100(c) EPC and to the amendments made in opposition proceedings under Article 123(2) EPC. In the following discussion the objections still applying to the present claims are dealt with.

2.3 Claim 1 is directed to a method for producing a composite web comprising the following steps:

- (i) placing a non-woven web (31) and a perforated film (30) in a face-to-face relationship;

- (ii) stretching the nonwoven web (31) and the perforated film (30) together while they are in a face-to-face relationship and in an unbonded state sufficiently to induce breakage of inter-fibre bonds and induce softness in the non-woven web; wherein the stretching step comprises passing the non-woven web (31) and the perforated film (30) into a nip formed by a pair of intermeshing gear rollers (33, 34); and
- (iii) thermal bonding of the nonwoven web to the perforated film to form a composite web, wherein the bonding step occurs simultaneously with the stretching step and wherein bonding takes place in the nip between two of the intermeshing gear rollers (33, 34) wherein said intermeshing gear rollers (33, 34) are heated.

2.4 It is undisputed that there is no explicit support for this claim in the application as filed. Nevertheless, the claimed method is supported by the application as filed for the following reasons:

2.4.1 Although a different wording is used, the method now claimed represents an embodiment within the scope of claim 1 as filed, namely the embodiment comprising activating two or more webs together in a face-to-face relationship and in an unbonded state, wherein the means for activating comprises a pair of (two) intermeshing gear rolls (claim 2 as filed), bonding takes place in the nip between two of the intermeshing gear rolls (claim 4 as filed), one web is a non-woven web (claim 6 as filed) and one web is a perforated film (claim 7 as filed).

2.4.2 The claim is further supported by paragraph [0058] of the application as filed, wherein the embodiment now claimed is described by reference to figure 3. Thus, in paragraph [0058] it is stated that (relevant passages underlined by the board):

" A further embodiment is shown in figure 3. In this embodiment, the bonding and activation take place simultaneously, while the webs are in between the teeth in the nip of the intermeshing gears on activation rolls 33 and 34. In this case, thermal energy from the activation rolls is sufficient to cause adhesion. Nonwoven (31) and perforated film (30) stock can be fed in a face to face relationship to a nip (32), and from there onto heated activation rolls (33 and 34) via a layon roll (35). In this embodiment, there is no nip roll to apply pressure to the activated web against the activation roll (34), as the bonding takes place simultaneously with activation while in the nip between rolls 33 and 34. In order to facilitate bonding in this way, adhesive can be applied to the film 30, and preferably a pressure sensitive adhesive is applied...".

This paragraph explicitly indicates that the non-woven and the perforated films are fed in a face-to-face relationship as required by step (i), a feature already disclosed in step (i) of claim 1 as filed.

Further, it indicates that the bonding step occurs simultaneously with the activating step. This is supported by the wording "the bonding takes place simultaneously with activation" in paragraph [0058], because it is evident from the specification that the term "activation" refers to the process of "stretching". Since the specification consistently uses

the term "activating" to refer to a process of stretching, this passage also discloses that the bonding step occurs simultaneously with the stretching step as required in step (iii) of claim 1. Thus, in paragraph [0003], the term "activating" is equated with "stretching it [a web] in one or more directions" and in paragraph [0004], "activation" is said to refer "to the process of stretching the composite web beyond the total extensibility of the film or nonwoven web or webs that make up the material" and further that "The activation generally is accomplished by one of two processes. One process involves stretching by a set of intermeshing gears, and the other process involves stretching between driven rolls (driven at different speeds) in the machine direction of the web".

In view of these disclosures in the application as filed the board concludes that the word "stretching" in the claim is supported by the wording "activating" throughout the specification.

2.4.3 The appellant also objected to the wording "to induce breakage of inter fiber bonds and to induce softness into the nonwoven web" in step (ii) of claim 1 as not being supported by the application as filed. This is, however supported by paragraph [0004] wherein it is stated that "In the case of nonwoven webs, breakages of inter bonds can occur. The yielded material then feels soft to the touch". Although these sentences relate to the description of the relevant prior art, it is evident for the skilled person that the same meaning is intended in the patent. There is no room in the application as filed for a different interpretation.

2.5 Concerning the objection of the appellant that two features present in paragraph [0058] and omitted in the

claim, namely the use of an adhesive and a nip roll, created an unallowable intermediate generalisation, the board notes:

- that the use of an adhesive is only optional in paragraph [0058] in order to help the bonding to form (cf. "In order to facilitate bonding in this way, adhesive **can** be applied to the film 30...", emphasis by the board); and
- that there is also no need to explicitly exclude the use of a nip roll to apply pressure in the process of claim 1. The reference to a nip roll in paragraph [0058] is made to explain that the process therein disclosed takes place in the nip formed by a pair of intermeshing gear rollers (as indeed claimed) and that a nip roll as used in the embodiments of figures 1 and 2 is not needed to apply (additional) pressure in the embodiment of figure 3.

In view of the above considerations, the board is satisfied that the omission of these features in the claim does not constitute an intermediate generalisation of the disclosure of paragraph [0058].

2.6 In its statement of grounds of appeal the appellant also objected to the adaptation of the description during the opposition proceedings. These objections were dealt with during the adaptation of the description in appeal proceedings and are discussed under point 6 below.

2.7 For these reasons the amendments made are allowable under Article 123(2) EPC.



3. *Sufficiency of disclosure*

3.1 In its written submissions the appellant argued that the patent was insufficiently disclosed because (i) there was no way to determine whether softness had been induced into a non-woven web and (ii) the patent did not disclose how to "induce breakage of inter-fiber bonds", as opposed to breaking bonds or fibres.

3.2 The board agrees with the finding in the appealed decision that the invention is sufficiently disclosed. The claimed method indicates the steps to be carried out to obtain the desired composite web and the specification indicates the starting materials, the apparatus to be used and how the method is to be carried out. A preferred embodiment combining activation and thermal bonding is performed on conventional intermeshing gear-activation equipment as shown in figure 3 (see also paragraph [0059] of the patent specification).

3.3 The objections of the appellant actually relate to the interpretation of the claim, and to Article 84 EPC rather than to sufficiency of disclosure. In any case, the specification itself indicates in paragraphs [0003] and [0004] that activation of a web by stretching it in one or more directions induces softness into the web as perceived by a person touching it, and that this effect is already known in the art (see citations in paragraph [0004] of the specification). The claim itself contains instructions as to what to do and how to achieve softness, namely by passing the non-woven web and the perforated film into a nip formed by a pair of intermeshing gear rollers. The degree of softness achieved can be measured by methods known to the

skilled person, although this is not required by claim 1.

3.4 Consequently, the board is satisfied that the requirement of sufficiency of disclosure is met.

4. *Novelty*

4.1 The novelty of the subject-matter of claim 1 was contested by the appellant in the light of D3 and D5.

4.2 Before discussing these documents, it is noted that the novelty objections citing D3 and D5 are based on a misinterpretation by the appellant of the subject-matter of the claim.

4.2.1 The appellant argued that claim 1 embraced embodiments in which all three steps were carried out simultaneously, and also methods in which perforating the film was carried out simultaneously with the stretching and the thermal bonding.

4.2.2 This interpretation of the claim is wrong. The claimed method requires the use of a non-woven web and a perforated film which are first placed in a face-to-face relationship (step (i)) and then passed into a nip formed by a pair of intermeshing gear rollers where they are simultaneously stretched and thermally bonded (steps (ii) and (iii)). The wording of the claim mandatorily requires that the film is already perforated (cf. claim 1 "placing a nonwoven web (31) and a **perforated** film (30)...", emphasis by the board) when entering the intermeshing gear rollers. There is no room for a different interpretation of the claim using a non-perforated film, which would then be perforated during the stretching and thermal bonding.

4.3 Document D3

4.3.1 D3 discloses in the last full paragraph of page 3, under the heading "DETAILED DESCRIPTION OF THE INVENTION" a laminate web suitable for use in an absorbent article comprising at least two layers. The layers are referred to in D3 as precursor webs and can be a film or a non-woven or woven web. They can be joined by adhesive, thermal bonding, ultrasonic bonding, and the like, but are preferably joined without the use of adhesive or other forms of bonding. The key feature of the laminate web of D3 is a mechanical interlocking of the two precursor webs.

In the embodiment of figure 5, mainly relied upon by the appellant, a laminate web is made by mechanically deforming the precursor webs in the apparatus shown in figure 5. In the method therein described the first and second precursor webs are moved in the machine direction to the nip of counter-rotating intermeshing rolls. As each precursor web goes through the nip, the teeth of the roll which are intermeshed with grooves of the other roll simultaneously urge portions of the precursor web out of the plane to form "tufts" (see paragraph bridging pages 15 and 16 and figure 5; see also figures 1 to 3 to see the structure of the tufts).

4.3.2 There is, however, no precursor web in D3 that is a perforated film. Perforation takes place simultaneously with stretching in the intermeshing gear rollers, as described in the preceding paragraph. Step (i) of claim 1 is therefore not disclosed in D3.

Moreover, nor does any thermal bonding occur simultaneously with stretching in the embodiment of

figure 5 of D3, as required by step (iii) of claim 1. As indicated in point 4.3.1 above, the laminate web of D3 in the embodiment of figure 5 is joined by the interlocking mechanical engagement resulting from the formation of tufts. Although thermal bonding is mentioned as a possible alternative for joining the precursor webs in D3, its use is discouraged in D3, as disclosed on page 3, lines 21 to 23 stating that:

"Precursor webs 20 and 21 (and any additional webs) can be joined by adhesive, thermal bonding, ultrasonic bonding and the like, but are preferably joined without the use of adhesive or other forms of bonding"

and on page 10, lines 1 to 3 stating that:

"The frictional engagement of the tufts and openings provides for a laminate web structure having permanent tufting on one side that can be formed without adhesives or thermal bonding".

The appellant also relied on the paragraph bridging pages 22 and 23 to argue that thermal bonding takes place in D3. However, the passage therein cited:

"In some embodiments it may be desirable to use adhesives or thermal bonding or other bonding means, depending on the end use application of web 1"

suggests that this step of bonding occurs at the end, i.e. after the formation of tufts.

4.3.3 For these reasons the board concludes that there is no clear and unambiguous disclosure in D3 of a method for producing a composite web falling within the scope of claim 1.

4.4 Document D5

4.4.1 D5 discloses a process for rendering films, film composites and articles made therefrom less resistant to the passage of water vapour by passing a filled precursor film or film composite through the nip of interdigitating grooved rollers (see abstract). In the process of D5 a precursor film is prepared from a polymer composition that comprises at least one polyolefin component, at least one filler component, and optionally an elastomeric component (see column 3, lines 18 to 21). The precursor film itself, or a composite having one or more additional layers, is then passed through one or more interdigitating pairs of rollers to give the precursor film a high water-vapour transmission rate (see columns 7/8, "Use of the Precursor Film").

The appellant maintained that the process of ring rolling disclosed on column 8, line 63 to column 11, line 17 (see also figure 1) anticipated the subject-matter of claim 1. In this context, it referred to the passage in column 9, lines 27 to 35, wherein the precursor film (10), optionally together with another film of fabric (11), is passed into the nip of interdigitating grooved rolls (24) and (25). The web(s) is/are thereby stretched more uniformly when the rolls are heated (column 9, lines 36 to 41).

4.4.2 The board disagrees. The embodiment of figure 1 of D5 does not represent an embodiment as claimed in claim 1. Apart from the fact that the use of a second non-woven web is only optional in that embodiment, there is no disclosure in D5 of the use of a perforated film or of

thermal bonding occurring simultaneously with the stretching step.

As already explained in point 4.2.2 above, claim 1 mandatorily requires the use of a perforated film. Such film is not used in D5. The appellant argued in this context that a filler can be used in D5 to impart breathability to polyolefin films (see column 5, lines 63 to 64) and that the fillers are needed to ensure the interconnection within the film of voids created at the situs of the filler, during the subsequent stretching step (column 10, lines 10 to 13). However, this disclosure suggests that the voids arise only when the film composite is being passed between the interdigitating grooved rollers and, consequently, it cannot anticipate step (i) of claim 1 requiring the use of an already perforated film.

Moreover, in D5 no thermal bonding step takes place simultaneously with the stretching step. According to column 9, lines 54 to 56, the webs where two or more webs are fed are stretched and enmeshed while passing between the interdigitating grooved rolls and are thus lightly bonded together to produce the final product. The webs are not thermally bonded but merely entrapped during the process. Also, the rolls are heated to avoid tearing of the webs (see column 9, lines 36 to 40 and 51 to 53), not to achieve any thermal bonding.

4.4.3 For these reasons the board concludes that the subject-matter of claim 1 is also novel over D5.

5. *Inventive step*

5.1 The patent aims to provide a process for activating, and thereby rendering soft to the touch, webs or films

of fibrous materials (see paragraph [0001] of the patent specification). According to the patent, prior-art processes for the same use show some drawbacks when applied to non-woven webs as the processes disrupt their structure (see [0007]).

## 5.2 Closest prior art

5.2.1 The appellant relied on D3 and/or D5, both discussed above in relation to novelty, as representing the closest prior art.

5.2.2 In the board's judgement, the disclosure of D5 does not represent a suitable starting point for the assessment of inventive step. According to EPO jurisprudence, the closest prior art for assessing inventive step is a prior-art document disclosing subject-matter conceived for the same purpose or aiming at the same objective as the claimed invention, and having the most relevant technical features in common.

5.2.3 Unlike the patent, D5 aims to improve (increase) the water-vapour transmission rate of a disposable article so that this rate will be relatively high in all or part of the article, with the article maintaining good resistance to liquid permeability and sufficient physical strength (see column 2, lines 7 to 15).

Thus, D5 is not directed to the same purpose or effect as the claimed invention, and therefore does not qualify as the closest prior-art document.

5.2.4 In contrast, D3 also aims to produce a product that is comfortable to the wearer, being soft to the touch (see page 2, lines 5 to 7 and/or page 14, lines 12 to 14).

Therefore, the board agrees with the respondent that D3 represents the closer prior art.

5.3 Problem to be solved and its solution

5.3.1 There are no experimental data demonstrating any improvement of the composite webs prepared according to claim 1 over those obtained by the method of D3.

5.3.2 The problem to be solved by the patent in suit has to be defined as the provision of an alternative method of providing a soft laminated web.

5.3.3 This problem is solved by the method of claim 1, wherein a non-woven web and a perforated film in an unbonded state are stretched and thermally bonded simultaneously using intermeshing gear rollers.

5.3.4 It has not been contested that this problem has been credibly solved by the claimed method, and the board itself is also satisfied that this is indeed the case.

5.4 Obviousness

5.4.1 It remains to be decided whether, in view of the available prior art, it would have been obvious for the skilled person to solve the technical problem, as defined above, by the means claimed.

5.4.2 There is no suggestion in D3 itself of the claimed solution. In fact, D3 pursues a completely different approach, namely the formation of tufts to achieve softness (see point 4.3 above).

5.4.3 The board also cannot follow the argumentation of the appellant that carrying out stretching and thermal



bonding simultaneously would be obvious to the skilled person from his common general knowledge. While it is undisputed that thermal bonding is well known in the field, the appellant has failed to give any reason why the skilled person would combine those steps in order to prepare a soft product.

5.4.4 Insofar as the appellant relied on D5 as closest prior art, this inventive-step attack is flawed from the outset because it is not based on the closest prior art. The attack based on D5 as closest prior art is clearly made in the knowledge of the invention and must therefore fail.

5.5 In view of the above, the board concludes that the person skilled in the art, starting from D3 as the closest prior art, would not have arrived in an obvious manner at the subject-matter of claim 1. The subject-matter of claim 1 and, by the same token, that of dependent claim 2, therefore involves an inventive step.

## 6. *Adaptation of the description*

6.1 During the oral proceedings the respondent filed a description adapted to the amended claims. The amendments were discussed with the appellant, which in the end only objected to the amendment made to paragraph [0045] of the granted patent.

6.2 The first sentence of amended paragraph [0045] reads as follows (amendments over the application as filed are indicated in strike-through and in bold):

"The webs ~~preferably~~ include a nonwoven material and a **perforated** film."

6.3 In the appellant's view, the amendment added subject-matter because the only mention of a perforated film in combination with a nonwoven material in the application as filed was in connection with the specific embodiments of figures 1 to 3. In its view, the amendment added a new, general disclosure about the combination of non-woven and perforated film that was not covered by the application as filed.

6.4 The board disagrees. The amendment was made during the opposition proceedings to adapt the description to the claims maintained by the opposition division. In those claims, as well as in the claims upheld by the board, the method had been limited to the use of a non-woven web and a perforated film, and the description needed to be adapted to that embodiment. The use of a non-woven film and a perforated film was a preferred embodiment in the application as filed (see, for instance, claims 6 and 7 as filed; see also the description of figures 1 to 3 in the application as filed). The amendment merely makes explicit in paragraph [0045] what was already taught in the application as filed, and consequently does not add subject-matter.

#### AUXILIARY REQUESTS

As the main request is allowed, there is no need for the board to deal with these requests.

## 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 patent on the basis of the following documents:
  - claims 1 and 2, filed as main request on 9 December 2016 during the oral proceedings before the board;
  - description pages 2 to 8 filed on 9 December 2016 during the oral proceedings before the board; and
  - figures 1 to 3 of the published patent specification.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated