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**Datasheet for the decision
of 4 July 2019**

Case Number: T 1087/15 - 3.2.06

Application Number: 04753497.9

Publication Number: 1628614

IPC: A61F13/56, A61F15/00

Language of the proceedings: EN

Title of invention:

DISPOSABLE ABSORBENT ARTICLES CONTAINED IN PACKAGE HAVING
TRANSPARENT WINDOW

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponents:

Essity Hygiene and Health Aktiebolag
Kimberly-Clark Worldwide, Incorporated

Headword:

Relevant legal provisions:

EPC Art. 56, 123(2)
RPBA Art. 13(1)

Keyword:

Selection of appropriate closest prior art
Inventive step - main request and auxiliary request 1 (no)
Late-filed auxiliary requests 2 and 3a - admitted (no)

Decisions cited:

T 0548/03

Catchword:



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Case Number: T 1087/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 4 July 2019

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 5 January 2015
rejecting the opposition filed against European
patent No. 1628614 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	C. Brandt

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 1 628 614. It requested that the decision be set aside and the patent be revoked.
- II. In its letter of response, the respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 4.
- III. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:
- D1 WO-A-02/096331
D5 WO-A-97/49618
D7 GB-A-2 273 279
- IV. With letter of 25 January 2019 the respondent filed an auxiliary request 5.
- V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it questioned the presence of an inventive step in the subject-matter of claim 1 as granted and in that of claim 1 of the auxiliary requests 1 to 4.
- VI. With letter of 4 June 2019, the respondent withdrew certain auxiliary requests and filed new ones resulting in auxiliary requests 1 to 7 being on file.

VII. Oral proceedings were held before the Board on 4 July 2019, during which the appellant withdrew auxiliary requests 2 and 4 to 7 on file, made auxiliary request 3 its new auxiliary request 2 and filed a new auxiliary request 3a. The final requests of the parties were as follows:

The appellant requested that the decision under appeal be set aside and the European patent No. 1 628 614 be revoked.

The respondent requested that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form on the basis of auxiliary request 1 or the new auxiliary request 2, filed as auxiliary request 3 with letter dated 4 June 2019, or the new auxiliary request 3a filed during the oral proceedings on 4 July 2019.

VIII. Claim 1 of the main request reads as follows:

"A disposable absorbent product, comprising:
a package (100) having a transparent window (16); and
a plurality of individually wrapped disposable absorbent articles (20) which are stacked and contained in the package (100);
each absorbent article having a longitudinal centerline (L) and a transverse centerline (T), and including a liquid impermeable backsheet (34) having a garment facing surface, an adhesive means disposed in the longitudinal direction, and a wrapper sheet (26) for individually wrapping the absorbent article, the adhesive means being disposed between the garment facing surface of the backsheet (34) and the wrapper sheet (26);
the adhesive means including a plurality of adhesive

sections (41-49) which are spaced apart one another by at least one non-adhesive section (51-56), the wrapper sheet (26) covering the adhesive means and the garment facing surface of the backsheet, each absorbent article being folded about at least one folding line (F1) that intersects the adhesive means at the non-adhesive section (51-56) such that the folding line (F1) contains no adhesive section (41-49); wherein the stacked plurality of the individually wrapped absorbent articles (20) are arranged associated with the transparent window (16) such that the folding line (F1) of each absorbent article (20) positions towards the transparent window (16) of the package (100)."

Claim 1 of auxiliary request 1 reads as for claim 1 of the main request wherein immediately after the first recitation of 'wrapper sheet (26)' the following feature is inserted:

"having a light transmittance of at least about 10%".

Claim 1 of new auxiliary request 2 reads as for claim 1 of auxiliary request 1 wherein immediately before the first recitation of 'transparent window (16)' "a" is deleted and the following is inserted:

"exactly one".

Claim 1 of new auxiliary request 3a reads as for claim 1 of the main request wherein immediately after the first recitation of 'wrapper sheet (26)' the following feature is inserted:

"having a light transmittance in a range of about

80-100%".

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

Main request

The subject-matter of claim 1 lacked an inventive step starting from D7 and combining this with the technical teaching of D5. D7 was a suitable starting point being directed to a similar product and function to that of the claimed invention. No avoidance of adhesive deterioration could be credited to the claimed window and folded article combination as claimed, since adhesive degraded by uv light was not claimed and multiple windows in the package were not excluded from the claim's scope. The objective technical problem to be solved was simply to obtain information about the packaged articles, the information possibly being just the number of articles remaining in the package. D5 disclosed packaging for absorbent articles incorporating a window for obtaining information about the packaged articles and thus provided the necessary hint to the solution of claim 1.

Auxiliary request 1

This did not overcome the inventive step objection against the main request. A light transmittance of about 10% was extremely low and might be regarded even as *de minimis* and could thus not contribute to the visibility of any information relating to the wrapped absorbent articles viewed from the edge. The objective technical problem to be solved relating to this feature was nothing more than providing an alternative wrapper sheet.

New auxiliary request 2

This should not be admitted since 'exactly one'

transparent window in the package was *prima facie* not directly and unambiguously derivable from the application as filed.

New auxiliary request 3a

This should also not be admitted. The newly added feature in claim 1 changed the nature of the invention as well as the course of the appeal case and would require a new search to be carried out. It would also not be reasonable to expect the appellant to deal with such a complex change of case without adjournment of the proceedings.

X. The respondent's arguments may be summarised as follows:

Main request

The subject-matter of claim 1 involved an inventive step. D7 was an inappropriate starting point for an inventive step attack. T548/03 confirmed that when starting from a remote document the formulation of the problem to be solved would involve hindsight. D1 was a better starting point for an inventive step attack since it disclosed all features of claim 1 save for the pattern of adhesive and the orientation of the articles. If nonetheless starting from D7, the technical problem to be solved based on the differentiating features over D7 was 'to facilitate handling of sanitary napkins in a manner that best protects them and better allows a consumer to obtain information about them'. The inventive claim simply needed to deliver a solution to the technical problem rather than be limited to products experiencing degradation by uv light. D5 would not be considered by the skilled person for a solution to the technical problem, particularly since it provided no information

as to

- how the fold of a sanitary napkin would be arranged relative to the package window if it were used to package the absorbent articles of D7, and
- all the articles being consistently stacked within the package.

Auxiliary request 1

The subject-matter of claim 1 involved an inventive step. Relative to a wrapper sheet with absolutely no light transmittance the claimed wrapper sheet would allow some light to pass through. This contributed to the objective problem of enabling a consumer to directly obtain information about the packaged sanitary napkins. Paragraph [0032] linked back to paragraph [0004] of the patent such that the claimed light transmittance enabled information about the sanitary napkins to be obtained.

New auxiliary request 2

The request should be admitted as it *prima facie* overcame the inventive step objections of the previous requests and did not introduce any new problems. The basis for the added feature in claim 1 of the present request 'exactly one transparent window' was claims 1, 9 and 10 as filed in addition to the final two lines of page 2 and page 13 line 4 of the description as filed.

New auxiliary request 3a

This should also be admitted as it was filed in response to objections to the previous request, particularly relating to 10% light transmittance being *de minimis*, heard for the first time at oral proceedings before the Board. Both auxiliary request 1 and 2 had already included a light transmittance of at least 10% such that the appellant should have been in a

position to deal with the amendment in this request.

Reasons for the Decision

1. *Main request*

1.1 *Article 100(a) EPC - Inventive step*

The Board finds that starting from D7 and combining this with the technical teaching of D5, the skilled person would reach the claimed subject-matter without exercising an inventive step.

1.1.1 The respondent's contention that D7 was an inappropriate starting point for an inventive step attack is not accepted. In this regard the Board finds that an 'appropriate' starting point for an inventive step objection can be any piece of prior art in the same field as, or a closely neighbouring field of, the claimed invention, as also stated in the Board's communication prior to oral proceedings. D7 clearly meets this requirement, being directed to individually wrapped, folded sanitary napkins which are an integral part of the subject-matter of claim 1. To be overly restrictive as regards possible starting documents for an inventive step attack is unnecessary since less promising starting points would anyway make an obvious modification thereof (in order to reach the claimed subject-matter) more difficult than when starting from a more promising document. Therefore, rather than the 'appropriateness' of a document being analysed in too great detail in advance of the formulation of an inventive step attack, less promising starting documents will ultimately be exposed by resulting in unsuccessful inventive step attacks. In this regard it

should be remembered that 'closest' prior art is merely a label given to the piece of prior art from which an inventive step attack starts and which is considered to be the most promising. In many cases it may indeed not be possible to identify whether one piece of prior art is necessarily 'closer' than another piece of prior art, and doing so may well artificially restrict inventive step considerations using the problem/solution approach. In the present case, the claim is directed to a combination of a package and the articles in the package such that selecting one element of the combination claimed is found by the Board to be an appropriate starting point - not least since it is well known that such articles as in D7 are typically stacked and contained in an outer package.

- 1.1.2 The respondent's contention that D1 presented a better starting point for an inventive step attack is not convincing. Although D1 discloses a packaged stack of sanitary napkins, each being folded inwardly and individually wrapped, the packaged articles disclosed there are not specified in the same way as claimed regarding the positioning of adhesive.
- 1.1.3 The respondent's reference to T0548/03, and the suggestion therein that hindsight would influence the formulation of the technical problem when starting from an inappropriate document, fails to change the above finding, not least since D7 is found to be an appropriate starting point (as explained above). In as far as hindsight is concerned, knowledge of the claimed invention is however absolutely necessary in order to formulate the objective technical problem, irrespective of how 'close' the prior art document is to the claimed invention; the features differentiating the claimed subject-matter from the starting document must be

identified, their technical effect determined and thus the problem to be solved formulated. In as far as such knowledge of the claimed invention is labelled as 'hindsight', then indeed this particular type of hindsight is a necessity in order for the technical problem to be formulated on an objective basis. As long as there is no reason (primarily a technical reason) why the content of the document selected as the closest prior art would itself not be suitable or compatible for use with respect to the subject-matter claimed, any analysis of 'how close' the prior art starting document is judged to be to the claimed invention is not something which should exclude it from being the closest prior art. In the present case, no such reason excluding D7 from being suitable was apparent; in fact quite the opposite.

- 1.1.4 In summary, therefore, the Board finds D7 to be a perfectly valid starting point for an inventive step attack against the subject-matter of claim 1.
- 1.1.5 At oral proceedings both parties stated their agreement with the preliminary opinion of the Board regarding D7 failing to disclose the following features of claim 1:
- A package (for absorbent articles) having a transparent window; and
 - a plurality of individually wrapped absorbent articles which are stacked and contained in the package;
 - wherein the stacked plurality of the individually wrapped absorbent articles are arranged associated with the transparent window such that the folding line of each absorbent article positions towards the transparent window of the package.

The respondent notably dropped its contention that D7 failed to disclose non-adhesive sections at the fold lines.

- 1.1.6 The respondent's contention during written proceedings that the technical problem to be solved based on these differentiating features over D7 was 'to facilitate handling of sanitary napkins in a manner that best protects them and best allows a consumer to obtain information about them' is however found not to be objective. The context of 'how best to protect the sanitary napkins' in the posed technical problem related to protection from undesirable consequences of uv radiation on the adhesive in the articles. This problem is however not solved across the scope of claim 1 since the absorbent product claimed is not even limited to employing adhesive degraded through exposure to light and, absent such, protection of the article from UV radiation is irrelevant. Likewise, in accordance with the claim, the articles are individually wrapped in an undefined wrapper material, which for example could well be fully opaque such that no uv radiation, even if it did enter the outer package, would impinge on the articles. The respondent's argument in this regard that the claim simply needed to 'deliver a solution' to a technical problem which could occur in some products, albeit not defined, rather than be limited to products experiencing degradation by uv light, misses the point here; lacking any product features in the claim which are subject to degradation by uv light results in a technical problem directed to avoiding uv light degrading effects not being objective, since that problem simply does not exist over part of the scope of the claim. The lack of such features has as a consequence that the objective technical problem cannot

rely on avoidance of uv light effects at all. The objective technical problem is thus, as also argued by the appellant, seen to be 'how to facilitate handling of sanitary napkins which allows a consumer to directly obtain information about them'.

1.1.7 In trying to solve this problem the skilled person would consider the teaching of D5. The respondent's argument that D5 would not be considered by the skilled person for a solution to the technical problem is not persuasive. D5 discloses, particularly in the Fig. 12 embodiment, a package with a transparent window suitable for containing disposable absorbent products such as feminine care products (see page 3, lines 23 to 26). D5 thus discloses information relating to the same technical field as the claimed invention and also directed to facilitating handling of the napkins as included in the posed objective technical problem; the Board thus holds that the skilled person would indeed consider D5 as providing a solution to the posed problem.

1.1.8 The information obtained by the consumer about the absorbent articles may be the number of articles in the package or remaining in the package. This is found to be a reasonable interpretation of the expression 'information about them (the sanitary napkins)' as stated in the objective problem since paragraph [0004] of the patent gives size and thickness of the absorbent articles just as examples of the type of information that consumers can gain from a window in a package. There is therefore no limitation in the claim just to such information being size and thickness, and the number of articles in the package can equally be understood as 'sanitary napkin information'.

- 1.1.9 Specifically with respect to D5, the number of remaining articles can be directly ascertained via the window 106 in Fig. 12, which wraps around the end, top and bottom walls (52, 56, 58) of the package (50). Particularly with individually wrapped sanitary napkins, the number of napkins remaining will be readily ascertained irrespective of the orientation of the napkins themselves both within the wrappers and also relative to the package itself.
- 1.1.10 The respondent's argument that D5 provided no information as to how the fold of a sanitary napkin would be arranged relative to the package window if it were used to package the absorbent articles of D7 has no bearing on the inventive step argument. In this regard it should be noted that the claimed absorbent products are each individually wrapped such that any advantage in ease of identifying individual articles by their folded, rather than open, edge cannot be recognised due to the wrapper making each article appear essentially identical whichever edge is observed. The feature in claim 1 that the folding line of each absorbent article positions towards the transparent window is thus, due to the wrapper essentially hiding the orientation of the fold, found to be arbitrary and cannot be considered a relevant differentiating feature of claim 1 over D7 for the purposes of supporting the presence of an inventive step.
- 1.1.11 The same is true of the alleged need to stack all the articles consistently within the package. With all the articles being individually wrapped, how the articles are oriented relative to the package window is irrelevant since the wrapper will mask any differences in orientation (see e.g. D7 Figures 13 and 15). At

least for the purpose of identifying the number of articles remaining in the package, every edge of the wrapper will provide an equally convenient visual surface for identifying an individual article enabling those remaining to be counted.

1.1.12 It thus follows that, starting from D7 and wishing to solve the objective technical problem posed, the skilled person would take the technical teaching in D5 to package the articles in D7 in the manner claimed and reach the subject-matter of claim 1 without the exercise of an inventive step.

1.1.13 The ground for opposition under Article 100(a) EPC consequently prejudices maintenance of the patent according to the main request due to the subject-matter of claim 1 not involving an inventive step. The main request is thus not allowable.

2. *Auxiliary request 1*

2.1 *Inventive step (Article 56 EPC)*

The subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

2.1.1 Claim 1 of this request differs from claim 1 of the main request in that the following feature has been added:

'(the wrapper sheet) having a light transmittance of at least about 10%'.

2.1.2 Despite the respondent's arguments to the contrary, the Board does not find this added feature to contribute in any appreciable manner to enabling the consumer to obtain information about the sanitary napkins wrapped

therein. While relative to a wrapper sheet with absolutely no light transmittance the claimed wrapper sheet will allow some light to pass through, the claimed lower limit of 'at least about 10%' is not seen to be of any significance for the purposes of enabling information regarding the wrapped sanitary napkins to be visually ascertained. In this regard it should also be noted that paragraph [0061] of the patent states that the window only needs to be 'somewhat translucent' and it is only 'preferable' (i.e. not a limitation of the claim) that the window provide sufficient transparency to provide a preferred view of the wrapped articles.

2.1.3 In this regard, however, the appellant's argument that the claimed light transmittance of at least about 10% was *de minimis* is not decisive. Rather, with the transparent window in the package having no claimed light transmittance, this potentially almost opaque window would extremely restrict a consumer from obtaining any information about the sanitary napkins *per se* in the package, beyond being able to ascertain the number of products, irrespective of any desired light transmittance of the wrapper sheet itself. Further, claim 1 fails to provide any indication regarding the orientation in the package of the seal or seals which must necessarily join the opposed edges of each individual wrapper sheet. Should the seal be oriented towards the transparent window in the package, which is within the scope of claim 1, this would further obscure any appreciable information which may otherwise be transmitted to the consumer through the wrapper sheet.

2.1.4 The respondent's argument that paragraph [0032] linked back to paragraph [0004] of the patent such that the

claimed light transmittance enabled information about the sanitary napkins to be obtained is not accepted. Whilst paragraph [0032] of the patent does discuss light transmittance of the wrapper sheet, it solely indicates the light transmittance 'ranges' as providing 'an effective view of the sanitary napkin through the wrapper sheet', this unambiguously relating to the disclosed light transmittance ranges of 45-100% and 80-100%, but not the preceding lower limit value 'at least about 10%', which is the claimed value. The claimed level of light transmittance is thus not seen to necessarily contribute in any manner to information that the consumer can obtain regarding the wrapped articles.

- 2.1.5 Lacking any contribution to the objective technical problem posed for claim 1 of the main request, the added feature in the present claim 1 must be directed to a separate problem which, as also argued by the appellant, can be seen as being the provision of a suitable wrapper sheet.

- 2.1.6 Wrapping materials for the sanitary napkin of D7 are disclosed on page 21, lines 7 to 13, including a non-woven fabric of polyethylene. Such a material is also disclosed in paragraph [0031] of the patent as a suitable wrapper material. Whilst such a wrapper material lacks the specifically claimed light transmittance value of at least about 10%, this is merely a typical value attributable to such well known sheet materials, which as such was not contested by the respondent, such that selecting one with at least about 10% light transmittance would be obvious. It thus follows that the newly added feature to claim 1 is obvious to the skilled person when starting from D7 and wishing to solve the (partial) objective technical

problem formulated above.

2.1.7 The subject-matter of claim 1 thus lacks an inventive step (Article 56 EPC) and auxiliary request 1 is therefore not allowable.

3. *New auxiliary request 2*

Admittance (Article 13(1) RPBA)

3.1 With this request having been filed as auxiliary request 3 on 4 June 2019 it 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.

3.2 As regards the subject-matter of claim 1 meeting the requirement of Article 123(2) EPC, the basis for the added feature in claim 1 of the present request 'exactly one transparent window' was given as claims 1, 9 and 10 as filed in addition to the final two lines of page 2 and page 13, line 4 of the description as filed.

3.3 Claims 1, 9 and 10 as filed each claim 'a transparent window', yet this is not an unambiguous disclosure of 'exactly one transparent window' as now claimed. The same is true for the reference to page 2 of the description which also discloses 'a transparent window', subsequently referred to as 'the transparent window' yet this is not a direct and unambiguous disclosure of the claimed 'exactly one' transparent

window.

3.4 Lines 4 to 10 on page 13 of the description discloses 'at least one transparent window' which 'can be provided at any panels (sic) of the package'. This wording alone fails to disclose 'exactly one' window in the package not least due to a plurality of panels being disclosed in relation to at least one transparent window being provided; this thus could include a window being provided in each panel of the package. It is further noted that this passage relates to the Fig. 8 package embodiment which notably also fails to unambiguously disclose exactly one window despite only one being depicted: nothing is known about the opposing side of the package to that depicted with the window, this also perfectly reasonably including a window as well.

3.5 The passages of the description and claims referred to as the basis for the amendments thus fail to provide a *prima facie* direct and unambiguous disclosure for the amended subject-matter.

3.6 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.

4. *New auxiliary request 3a*

Admittance (Article 13(1) RPBA)

- 4.1 This request was filed during the oral proceedings before the Board and its admittance is thus again at the discretion of the Board.

- 4.2 Relative to claim 1 of the previously considered new auxiliary request 2 (see point 3 above), claim 1 has had the 'exactly one' limitation for the transparent window removed, and further limits the light transmittance of the wrapper sheet to 'a range of about 80-100%'.

- 4.3 The deletion of the 'exactly one' limitation for the transparent window results in a claim which is not convergent with claim 1 of the previous request considered. The procedural complexity associated with a non-convergent set of requests requires the appellant and the Board to now consider a request of a broader scope, at least in the aspect of the transparent window, to that previously considered, which presents a new, complex situation in which the necessary considerations made in respect of the foregoing, higher ranking auxiliary request would in fact be in vain. Such a 'divergence of direction' in a set of requests, as in the present case with new auxiliary requests 2 and 3a, is thus seen as detrimental to procedural economy. Moreover, after discussion of the main request, the respondent was informed that the admittance of certain requests was an issue to be considered in regard to lack of convergency within the set of requests, and also due to the fact that the 'exactly one transparent window' language in the claim was provisionally considered to contravene Article 123(2) EPC (see the minutes, paragraph bridging pages 2 and 3), upon which the respondent was given the opportunity to reconsider its requests.

4.4 It is also noted that the introduction of the 'light transmittance range of about 80-100%' in claim 1 takes the appeal case and the alleged inventive subject-matter in a completely new direction to that previously argued by the respondent. Hitherto, for the entirety of the written appeal proceedings, the respondent had argued that avoiding degradation of the adhesive by uv light to at least be included, if not be at the heart of, the problem to be solved; only on the day of oral proceedings were these arguments dropped and a new line pursued whereby the invention now lay solely in enabling the consumer to obtain information about the packaged absorbent articles. The claimed light transmittance range of about 80-100% for the wrapper sheet might well contribute to an objective problem concerned with high light transmittance levels, since it can reasonably be expected to be able to ascertain features of the article wrapped within the wrapper sheet, albeit not necessarily through the window of the outer package for which no light transmittance levels are stated. As a result the changes made in the present auxiliary request are considered to involve not inconsiderable complexity, with which both the appellant and the Board cannot reasonably be expected to deal.

4.5 The respondent's argument that the previous auxiliary requests had already included a light transmittance of at least 10% and this was now being further limited to about 80 to 100%, as had also been indicated necessary in the Board's preliminary opinion, does not change the above finding. Whilst claim 1 of auxiliary request 2 indeed did claim a light transmittance of at least about 10%, the consequences on the presence of an inventive step in that claim did not require discussion since the request was not admitted for other reasons.

As regards auxiliary request 1, the claimed light transmittance of at least about 10% failed to influence the ability of the consumer to obtain information about the sanitary napkins (see point 2.1.2 above). The relevance of the wrapper sheet having the now claimed light transmittance would thus require discussion for the first time with respect to inventive step in the present request, which was, as indicated above, unreasonable for the appellant to deal with at such a late stage of the appeal procedure.

- 4.6 Although the respondent argued that the appellant had only mentioned the value of 10% being a *de minimis* value in regard to the first auxiliary request during the oral proceedings before the Board, and that this was its reason for introducing the far higher transmittance values by way of auxiliary request 3a, the Board had not based its conclusion regarding the first auxiliary request on the idea of a *de minimis* value, but merely on one which was simply very low and thus not necessarily, over the whole scope of the claim, solving the problem as formulated by the respondent.
- 4.7 For completeness it is further noted that the inclusion in claim 1 of the present request of a light transmitting wrapper sheet only partially responds to the indication in the Board's preliminary opinion regarding features lacking in the claimed subject-matter. These further features were an adhesive being degraded by uv light and there being just a single window in the package which were also of importance if the objective technical problem to be solved were indeed to concern protecting the sanitary napkins as well as allowing a consumer to obtain information about

them.

4.8 Additionally, the admittance of this request would involve completely new aspects with respect to the consideration of inventive step, seemingly also requiring a search for new prior art due to the fact that this feature was taken from the description at such a late stage; this could not reasonably be achieved without adjournment of the oral proceedings which would clearly run counter to the need for procedural economy.

4.9 As a consequence, the Board exercised its discretion not to admit new auxiliary request 3a into the proceedings (Article 13(1) RPBA).

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