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**Datasheet for the decision
of 2 December 2019**

Case Number: T 1043/16 - 3.2.06

Application Number: 04814528.8

Publication Number: 1699403

IPC: A61F13/56, A61F13/58

Language of the proceedings: EN

Title of invention:

GECKO-LIKE FASTENERS FOR DISPOSABLE ARTICLES

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:

Gottlieb Binder GmbH & Co.

Headword:

Relevant legal provisions:

EPC Art. 100(a), 56

Keyword:

Inventive step - main request (no)

Decisions cited:

Catchword:



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Case Number: T 1043/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 2 December 2019

Appellant: Gottlieb Binder GmbH & Co.
(Opponent) Bahnhofstr. 19
71088 Holzgerlingen (DE)

Representative: Bartels und Partner, Patentanwälte
Lange Strasse 51
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Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
(Patent Proprietor) 401 North Lake Street
Neenah, WI 54956 (US)

Representative: Dehns
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 8 March 2016
rejecting the opposition filed against European
patent No. 1699403 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
E. Kossonakou

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. 1 699 403. It requested that the decision be set aside and the patent be revoked.
- II. In reply, the respondent (patent proprietor) requested that the appeal be dismissed.
- III. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:
D2 DE 102 23 234 A1
D15 US 4 585 450
- IV. The Board issued a summons to oral proceedings and a communication containing its provisional opinion, in which it indicated *inter alia* that, in regards to inventive step, it would seemingly be obvious to the skilled person, when starting from D15 as the closest prior art and given the problem to be solved, to adapt the disposable garment therein with the adhesive connections of D2 and thus arrive at the subject-matter of claim 1.
- V. With a letter dated 20 November 2019, the respondent stated that it would not attend the oral proceedings.
- VI. The oral proceedings were duly cancelled.
- VII. Claim 1 of the main (sole) request reads as follows:
"1. A disposable absorbent article comprising a nano-fabricated attachment means, comprising a substrate and axisymmetric adhesive hairs disposed perpendicular to

the plane of the substrate, and wherein said hairs are effective to adhesively engage an opposing surface comprising a polymeric film or a fibrous web."

VIII. The arguments of the appellant may be summarised as follows:

Inventive step

The subject-matter of claim 1 did not involve an inventive step.

D15 disclosed an absorbent article with a different fastening mechanism than the one claimed.

The definition of the objective technical problem should not be restricted to the problems cited in the patent.

D2 described the problem that reversible adhesive connections (as in D15) containing glue might leave residues (see e.g. paragraph [0002]) and that it was the aim of D2 *inter alia* to solve this problem (see e.g. paragraph [0008]). The skilled person would thus take D2 into account when looking for a solution to the problem of residues. D2 further disclosed that its attachment means could be used in textiles generally and replace detachable fastening means.

The skilled person would thus adapt the disposable garment of D15 with the adhesive connections of D2 and arrive at the subject-matter of claim 1 without requiring an inventive step.

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

Inventive step

D15 was concerned with the possibility of allowing re-opening and re-attachment without tearing and was not at all concerned with improving adhesion or changing the surface modification of the fastening means as taught in D2.

The skilled person would find that D15 already provided an adequate solution and thus not look for another solution such as in D2 without the benefit of hindsight.

Reasons for the Decision

1. Inventive step
- 1.1 The appellant submitted with its grounds of appeal that the subject-matter of claim 1 did not involve an inventive step when starting from D15 in combination with the teaching of D2.
- 1.2 As already indicated in the communication of the Board (see point 2.1 of the communication), D15 discloses a disposable absorbent article with a different attachment means. The subject-matter of claim 1 differs from the absorbent article of D15 in that the article defined in claim 1 comprises a nanofabricated attachment means, which comprises a substrate and axisymmetric adhesive hairs disposed perpendicular to the plane of the substrate, and wherein said hairs are

effective to adhesively engage an opposing surface comprising a polymeric film or a fibrous web.

- 1.3 The claimed attachment means only requires a single surface for adhesion and would leave no residue, as described in paragraph [0003] of the patent and as was also mentioned in the communication of the Board (see point 2.2 of the communication). The objective technical problem is thus to provide an attachment means that requires a single surface for adhesion and leaves no residue.
- 1.4 The respondent argued that D15 was concerned with the possibility of allowing re-opening and re-attachment without tearing, and was not at all concerned with improving adhesion or modifying the surface of the fastening means as taught in D2, such that the skilled person would find the attachment means in D15 already provided an adequate solution and would not look for another solution. The Board however does not concur. The attachment means in D15 requires more than a single surface and leaves a closure tape 40 on the counter surface. The skilled person would thus be prompted to look for a solution to this problem in other prior art, such as D2. Merely because D15 offers one solution is no barrier to a skilled person looking for information to solve problems that are evidently present with that solution.

D2 discusses the problem that reversible adhesive connections containing glue may leave residues (see e.g. paragraph [0002]) and that it is the aim of D2 *inter alia* to solve this problem (see e.g. paragraph [0008]). The skilled person would thus indeed contemplate D2 when looking for a solution to the objective problem. Paragraph [0056] of D2 further

discloses that the attachment means of D2 can be used in textiles generally and can replace detachable fastening means. The skilled person would thus recognize that the disposable garment in D15 is a textile and accordingly adapt the disposable garment of D15 with the adhesive connections of D2 without requiring an inventive step (as already stated in point 2.3 of the communication).

- 1.5 The respondent provided no counter-argument to the Board's provisional opinion. The Board thus has no reason to deviate therefrom and confirms same herewith. Hence, the Board concludes that the ground of opposition under Article 100(a) EPC in conjunction with Article 56 EPC prejudices maintenance of the patent as granted.
- 1.6 In the absence of any further requests of the respondent, the Board concludes that the patent does not meet the requirements of the EPC and is therefore to be revoked.

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