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**Datasheet for the decision
of 11 December 2019**

Case Number: T 1814/16 - 3.2.04

Application Number: 07754328.8

Publication Number: 1998659

IPC: A47K10/32

Language of the proceedings: EN

Title of invention:

STACKS OF PRE-MOISTENED WIPES WITH UNIQUE FLUID RETENTION
CHARACTERISTICS

Patent Proprietor:

The Procter & Gamble Company

Opponent:

Essity Hygiene and Health Aktiebolag

Headword:

Relevant legal provisions:

EPC Art. 83, 100(b), 56

Keyword:

Grounds for opposition - insufficiency of disclosure (no)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 1814/16 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 11 December 2019

Appellant: Essity Hygiene and Health Aktiebolag
(Opponent) 405 03 Göteborg (SE)

Representative: Hoffmann Eitle
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Respondent: The Procter & Gamble Company
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Representative: P&G Patent Germany
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 14 June 2016
rejecting the opposition filed against European
patent No. 1998659 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman C. Heath
Members: G. Martin Gonzalez
J. Wright

Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received on 28 July 2016, against the decision of the Opposition Division posted on 14 June 2016 rejecting the opposition against European patent No. 1998659 pursuant to Article 101(2) EPC, and on the same day paid the appeal fee. The statement setting out the grounds of appeal was received on 19 October 2016.
- II. Opposition was filed under the ground of Article 100(a) EPC on lack of inventive step, under the ground of Article 100(b) on insufficiency of disclosure and under the ground of Article 100(c) EPC on added subject-matter.

The Opposition Division rejected the opposition having regard inter alia to the following evidence:

- (D1) EP 0 590 307 A2
(D3) Albin S Turbak, Editor: "Nonwovens: Theory, Process, Performance, and Testing", 1993, TAPPI PRESS, Atlanta US. ISBN: 0-89852-265-X
(D4) WO 2006/001739 A1

- III. The appellant-opponent requests that the decision under appeal be set aside and the patent revoked.

The respondent-proprietor requests maintenance of the patent according to a main request or a first auxiliary request both filed on 18 October 2019.

- IV. With letter of 18 October 2019 the respondent-proprietor withdrew the request for oral proceedings and also informed the Board that it will not attend the scheduled oral proceedings.
The appellant-opponent informed the Board, with letter of 14 November 2019, that it will also not attend the oral proceedings.

In view of the above, the Board decided in written proceedings.

- V. Independent claim 1 according to the main request reads as follows:

"A stack of pre-moistened wipes, said stack having a height from 50mm to 300mm and a saturation gradient index from 1.0 to 1.5, wherein:

said wipes comprise a composite of at least a first layer and a third layer of spunbond nonwoven webs, said first layer and said third layer comprising synthetic multicomponent fibers with an average fiber denier from 1.0 to 6.0 (1.11 to 6.67 dtex) and said composite further comprises a second layer comprising pulp, wherein said first layer is joined to a face of said second layer in a face to face relationship by bonding between the layers and said third layer is joined to a second face of said second layer in a face to face relationship by bonding between the layers, wherein said bonding comprises intertwining of the fibers between the layers achieved via hydroentanglement; and

said wipes are characterized by having a saturation loading from 1.5 to 6.0 grams of liquid composition per gram of wipe, wherein said liquid

composition has a surface tension from 20 to 35 dynes per centimeter; and

wherein said wipes have a dynamic absorption time from 0.01 to 0.2 seconds."

VI. The appellant-opponent argued as follows:

The patent specification does not disclose the invention in a manner sufficiently clear and complete. The subject-matter of claim 1 of the main request lacks an inventive step in the light of the teachings of D1, D3 and D4.

VII. The respondent-proprietor argued as follows:

The subject-matter of claim 1 as now amended according to the main request does not contain added subject-matter. The patent specification discloses the invention in a manner sufficiently clear and complete for the skilled person. The subject-matter of claim 1 of the main request is new and involves an inventive step having regard to the cited prior art.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention is concerned with stacks of pre-moistened wipes, see paragraph [0001] of the patent specification. It is desirable to provide the consumer with a large quantity of pre-moistened wipes in a portable, liquid impervious container, see paragraph [0004]. The claimed wipes' structure provides good lotion retention properties that minimizes the tendency

of the lotion to drain from the top of the stack to the bottom, and with it the associated unsatisfactory result that the wipes at the top are too dry and the wipes at the bottom too soggy, see paragraphs [0004], [0007] and [0008] of the specification.

3. Main request - Admissibility

The respondent-proprietor filed a new main request with letter of 18 October 2019, after oral proceedings have been arranged. The admission of such a request is at the discretion of the Board, Article 13 RPBA.

It is evident that the amendment to claim 1 of this new main request overcomes the outstanding added subject-matter issue, Article 123(2) EPC, as discussed in the Board's communication in preparation for the oral proceedings. It does also not give rise to new issues. Therefore, the new claims meet the clear allowability criteria for admissibility of late-filed requests. Its filing can also be regarded as a fair reaction to the Board's communication.

In view of the above, the board decides to admit the new main request into the proceedings, Article 13(1) and (3) RPBA.

4. Main request - Amendments

With respect to the previous main request on file (granted claims), claim 1 has been amended to include the feature that said wipes have a dynamic absorption time from 0.01 to 0.2 seconds.

New claim 1 is thus now a combination of originally filed claims 1 and 4. With regard to scope of

protection as compared to the granted version, claim 1 is also a combination of the features of granted claims 1 and 3.

The Board is therefore satisfied that the new claim set neither contains added subject-matter nor extends the protection conferred by the granted claims and that they thus meet the requirements of Articles 123(2) and 123(3) EPC.

5. Main request sufficiency of disclosure and inventive step

The appellant-opponent has raised insufficiency of disclosure and lack of inventive step objections for the granted claims. These objections are also relevant for the valid main request.

5.1 In its communication in preparation for the oral proceedings, see sections 4 and 5, the Board gave its preliminary opinion on these issues, which is also valid for the present main request, as follows:

"4. Sufficiency of disclosure - Main [granted claims] and first auxiliary requests

4.1. It is not in dispute that at least one way to carry out the invention is indicated in the description, see examples of paragraphs [0112]-[0114] in the specification. The appellant-opponent contests the finding of the opposition division that the claimed invention can be carried out over the whole range claimed, see impugned decision section 6.1. They in particular submit that an embodiment with an SGI (Saturation Gradient Index) of 1.0, the limit value of the claimed range 1.0 to 1.5, cannot be carried out.

4.2. According to established case law, the opponent generally bears the burden of proving insufficiency of disclosure. When the patent does not give any information as to how a feature can be put into practice, only a weak presumption in favour of sufficient disclosure exists and the opponent can discharge his burden by plausible argumentation against sufficiency, see case law in CLBA [9th Edition 2019], II.C.9, paragraph "The board in of **T63/06..**" (also cited by the appellant-opponent).

4.3. As held by the opposition division in the present case, it appears that the specification gives guidance to the skilled person how to influence the above parameter (SGI) in paragraphs [0123]-[0125] and also the capillary effect of the fibers, that may also serve to influence the SGI, in paragraph [0024]. The division thus found that the skilled person had sufficient information to obtain an SGI of 1.0, starting from the given examples in the specification of 1.26 - 1.38. It thus appears that the specification is not silent as to how to put into practice this feature over the whole range. The presumption of sufficiency of disclosure appears therefore to remain a strong one in this respect. The strength of the argument that the value of 1.0 is at the limit of the claimed range and that it may also be difficult to achieve does not appear to the board, at present, to be enough to rebut that presumption.

4.4. As regards the question of when the SGI is measured, it appears that the examples of table 1 of the patent specification give sufficient indication to the skilled person for consistently determining the

claimed parameter by means of two-week, one-month and three-month measurements.

5. Inventive step - Main [granted claims] and first auxiliary requests

5.1. It appears to be undisputed that D1 is a suitable starting point for the assessment of inventive step.

Without prejudice to the question, whether item No. 5 of table 4 of D1, with a rate of liquid migration index of 1.18, implicitly describes a saturation gradient index of within 1.0-1.5, it is not in dispute that D1 does not disclose intertwining the fibers between the layers by hydroentanglement. The board also considers that D1 does not directly and unambiguously disclose a lotion having a surface tension from 20 to 35 dynes per centimeter. In the board's present view, the assertion that the lotion chemical composition described on page 10, lines 21 to 26 of D1 meets this limitation, remains unsupported.

5.2. It appears that the combination of the claimed multicomponent fibers intertwined by hydroentanglement with pulp, as claimed, provides an improved ability to absorb and retain the lotion in a stack of wipes, see specification paragraphs [0012] and [0123]. The board thus agrees with the problem formulated by the opposition division, namely how to obtain high lotion retention properties of a stack of wipes such that they may be more conveniently stored and marketed in stacked configuration, see specification paragraph [0008] and section 10.4 of the impugned decision.

5.3. The appellant-opponent cites D3 and D4 as combination documents. However, these documents appear

to teach hydroentanglement as a bonding method to give higher bonding stress to the material, see D3 page 2, left column, last paragraph and D4, bridging paragraph pages 15-16). They thus do not seem to address the problem that the skilled person is trying to solve with the contested claim. It does not appear therefore that the skilled person would apply the teachings of D3 or D4, as a matter of obviousness, when tasked with the problem of improving liquid retention. There also seems to be no teaching in the cited documents that would prompt the skilled person to specifically restrict the surface tension value of the liquid composition.

5.4. Therefore, the board is of the preliminary opinion that the subject-matter of claim 1 (of both requests) involves an inventive step in the sense of Article 56 EPC."

5.2 In their letters informing the Board that they would not attend the oral proceedings, the parties merely referred to their written submissions and refrained from further comments on the Board's preliminary opinion. Absent any further submissions from the parties, the Board sees no reasons for deviating from its provisional opinion. It thus holds that the European patent discloses the invention according to the valid main request in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 83 and 100(b) EPC, and that the subject-matter of claim 1 of the main request involves an inventive step in the sense of Article 56 EPC.

6. For the above reasons the Board holds that the claims as amended according to the main request as filed on 18 October 2019 meet the requirements of the EPC. The patent can thus be maintained on the basis of these claims pursuant to Article 101(3)(a) EPC.

The description still needs to be amended in order to bring it into conformity with the new claims.

7. Procedural issues

The respondent-proprietor withdrew its request for oral proceedings with letter of 18 October 2019. The appellant-opponent informed the Board, with letter of 14 November 2019, that it will not attend the oral proceedings. According to generally established practice, the Board considers such statement as an equivalent to a withdrawal of the request for oral proceedings, see CLBA (9th Edition 2019), III.C.4.3.2.

The Board is further satisfied that by its communication dated 14 October 2019 the parties were made aware of the central points underlying this decision and that they have therefore had sufficient opportunity to take a position thereon. It is thus satisfied that the requirements of Article 113(1) EPC have been met.

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 with the following claims and a description to be adapted thereto:

Claims:

No. 1 to 8 according to the main request filed with letter of 18 October 2019.

The Registrar:

The Chairman:



G. Magouliotis

C. Heath

Decision electronically authenticated