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

Case Number: T 2685/17 - 3.2.06

Application Number: 09772934.7

Publication Number: 2296600

IPC: A61F13/49, G09B19/00, A61F13/15

Language of the proceedings: EN

Title of invention:
METHODS FOR ASSISTING CAREGIVERS IN FACILITATING TOILET
TRAINING

Applicant:
Kimberly-Clark Worldwide, Inc.

Headword:

Relevant legal provisions:
EPC Art. 84, 123(2)

Keyword:
Amendments - extension beyond the content of the application
as filed (yes)
Claims - clarity (no)

Decisions cited:

Catchword:



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Case Number: T 2685/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 11 January 2019

Appellant: Kimberly-Clark Worldwide, Inc.
(Applicant) 401 North Lake Street
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Representative: Dehns
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 25 July 2017
refusing European patent application No.
09772934.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
A. Jimenez

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the decision of the examining division refusing European patent application No. 09 772 934.7.

The application is based on an international application, published as WO-A-2010/001274.

- II. The appellant was summoned to oral proceedings before the Board which took place on 11 January 2019.

- III. At the end of the oral proceedings the applicant requested that the decision under appeal be set aside and a patent be granted on the basis of the 2nd auxiliary request submitted with its letter of 11 December 2018.

- IV. Claim 1 according to the appellant's sole request (i.e. the 2nd auxiliary request) reads as follows:

"An apparatus for use in a method for assisting a caregiver in determining when to select a next generation product for facilitating toilet training, the method comprising:
using a first absorbent product (20) on a child that is not toilet trained, the first absorbent product including indicia regarding at least one readiness target, the readiness target being related to a wetness characteristic of the child;
wherein the first absorbent product (20) includes a wetness detection system, the wetness detection system further comprising a signaling device (112), and
wherein the signaling device (112) monitors the amount of urine the child discharges into the first absorbent

product (20) in a single voiding when wetting the product;

providing information to a caregiver about a second absorbent product (20), the second absorbent product (20) possessing a toilet training feature not present in the first absorbent product (20); and the signaling device (112) generating a recommendation to the caregiver to switch from the first absorbent product (20) to the second absorbent product when the at least one readiness target has been reached by the child;

wherein the readiness target comprises an amount of urine the child discharges into the first absorbent product (20) in a single voiding when wetting the product, and wherein the first absorbent product (20) includes a void volume indicator;

the apparatus comprising:

a first absorbent product, the first absorbent product including indicia regarding at least one readiness target, the readiness target being related to a wetness characteristic of the child, wherein the first absorbent product (20) includes a wetness detection system, the wetness detection system further comprising a signaling device (112), wherein the signaling device (112) is configured to monitor the amount of urine the child discharges into the first absorbent product (20) in a single voiding when wetting the product; and means for providing information to a caregiver about a second absorbent product (20), the second absorbent product (20) possessing a toilet training feature not present in the first absorbent product (20); wherein the signaling device (112) configured to generate a recommendation to the caregiver to switch from the first absorbent product (20) to the second absorbent product when the at least one readiness target has been reached by the child;

wherein the readiness target comprises an amount of urine the child discharges into the first absorbent product (20) in a single voiding when wetting the product, and; [sic]

wherein the first absorbent product (20) includes a void volume indicator configured to indicate the amount of urine or other fluid present in the first absorbent product (20) after being wetted."

The set of claims according to the appellant's sole request comprises a second independent apparatus claim 7. Its wording is however not relevant for the present decision and is therefore not reproduced here.

Reasons for the Decision

1. The appeal cannot be allowed because amended claim 1 does not meet the requirements of Articles 84 and 123(2) EPC at least for the following reasons.

2. Claim 1 defines *inter alia* the following feature:

"the wetness detection system further comprising a signaling device (112), wherein the signaling device (112) is configured to monitor the amount of urine the child discharges into the first absorbent product (20) in a single voiding when wetting the product".

3. This feature is not disclosed in the application as filed and therefore the claimed subject-matter extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

Reference is made in the following to the published international application underlying the European application in suit for the purpose of comparing the

amended subject-matter to the content of the application as filed.

- 3.1 It is undisputed that the cited feature has no verbatim basis in the description or the claims as originally filed.

- 3.2 As support for this amendment to the claims as filed, the appellant pointed in particular to page 12, lines 13 to 19 and page 13, lines 11 and 27 to 31. Despite indeed containing references to monitoring the amount of urine discharged on the absorbent product, these passages nevertheless do not mention monitoring of an amount of urine discharged specifically "in a single voiding". According to the section of the description encompassing the cited passages, the signaling device (mentioned at the beginning thereof and described previously as one embodiment illustrated in Figure 1) is used to monitor at least one (unspecified) wetness characteristic. Specifically, monitoring an amount of discharged urine is performed according to the indicated section on pages 12 to 13 by a void volume indicator comprising wetness indication zones or areas arranged on the absorbent product. These wetness indication zones are susceptible of successively changing color when urine spreads out through the different zones. The skilled person cannot derive directly and unambiguously from this section that this type of void volume indicator would necessarily indicate an amount obtained in a single voiding compared to an amount of urine spread throughout the indication zones and resulting from multiple consecutive voiding.

Moreover, the skilled person understands from the above cited passages read in their entirety, that a signaling

device and this specific void volume indicator represent alternative types of indicators realised by different technical features to monitor wetness characteristics (cf. page 12, lines 11-19). Although a signaling device is mentioned also as being used in combination with the disclosed void volume indicator (cf. page 13, lines 27-31), it is not disclosed in this context by itself (i.e. independent of the void volume indicator) to monitor the amount of discharged urine, let alone an amount of a single voiding. Rather its purpose in this context is to indicate to a user the amount of urine monitored by the void volume indicator by means of intermediate electronics communicating with the void volume indicator.

- 3.3 The appellant's argument that according to the general description of the invention on pages 2 to 4, features of an absorbent product may be interchangeable, is not found convincing. This general section mentions indeed, as an example of a wetness characteristic to be monitored, an amount of urine discharged "in a single voiding", see page 3, lines 21/22 - which, incidentally, is the only part of the application as filed mentioning this specific wetness characteristic. The entire passage further mentions a number of ways of monitoring different types of wetness characteristics in an absorbent product by providing different features on it. However, the specific combination as defined by the above feature is not directly and unambiguously derivable by the skilled person from these general statements, neither read on their own nor in the context of the remaining parts of the description, claims or figures as originally filed.

- 3.4 The Board thus concludes that the subject-matter of claim 1 extends beyond the content of the application as originally filed contrary to Article 123(2) EPC.

4. The Board also finds that the same feature discussed above lacks clarity (Article 84 EPC) in that it defines a result to be achieved by the signaling device. It is not clear to the skilled person which structurally limiting technical features are implied by such a signaling device merely by indicating its purpose of monitoring an amount of urine discharged in a single voiding. Although it was argued that the amount discharged in a single voiding could be established by simply comparing a wet state to a dry state of the product, this is not accepted by the Board since no means are indicated (nor was any information provided showing this was common general knowledge) which could differentiate between a single and multiple voidings in this wet state.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated