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**Datasheet for the decision  
of 5 December 2024**

**Case Number:** T 1669/22 - 3.2.06

**Application Number:** 14183778.1

**Publication Number:** 2992865

**IPC:** A61F13/49, A61F13/56, A61F13/15

**Language of the proceedings:** EN

**Title of invention:**  
Absorbent article with asymmetrical side panels

**Patent Proprietor:**  
Drylock Technologies N.V.

**Opponents:**  
Ontex BV  
Essity Hygiene and Health Aktiebolag

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 123(2)

**Keyword:**

Novelty - Main request, auxiliary requests I, II, III, V - (no)  
Amendments - added subject-matter - auxiliary requests IV, VI  
- (yes)

**Decisions cited:**

T 0748/91

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1669/22 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 5 December 2024**

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**Representative:** Essity Hygiene and Health AB  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 4 May 2022  
revoking European patent No. 2992865 pursuant to  
Article 101(3)(b) EPC.**

**Composition of the Board:**

<b>Chairman</b>	P. Cipriano
<b>Members:</b>	M. Hannam
	W. Ungler

## Summary of Facts and Submissions

- I. An appeal was filed by the appellant (patent proprietor) against the decision of the opposition division revoking European Patent No. 2 992 865.
- II. With its grounds of appeal, the appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the main request, or on the basis of one of the auxiliary requests I to VI all filed with the statement of grounds of appeal.
- III. In their replies to the appeal, the respondents (opponent I and opponent II) each requested that the appeal be dismissed.
- IV. The following document, referred to by the appellant in its grounds of appeal, are relevant to the present decision:  
  
D1 WO-A-98/14156
- V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of the main request lacked novelty over D1, the same conclusion seemingly applying to the subject-matter of claim 1 of each of auxiliary requests I to III. It further indicated that the subject-matter of claim 1 of auxiliary request IV seemed not to meet the requirement of Article 123(2) EPC and that auxiliary requests V and VI seemed not to overcome the foregoing novelty objection and the

Article 123(2) EPC objection respectively.

VI. With its submission of 8 November 2024 opponent II indicated that it would not attend the scheduled oral proceedings.

VII. Oral proceedings were held before the Board on 5 December 2024. At the close of the oral proceedings the parties' unchanged requests were as indicated in points II and III above.

VIII. Claim 1 reads as follows, with feature annotation as used by the opposition division in its decision:

F1 A disposable absorbent incontinence article (1) comprising: a liquid permeable topsheet (24), a liquid impermeable backsheet (23) and an absorbent core (15) positioned in between the topsheet (24) and the backsheet (23), whereby the topsheet (24), backsheet (23) and absorbent core (15) form a chassis (5) of the absorbent article (1);

F2 the absorbent article (1) further comprising a front region (4), a rear region (2) and a crotch region (3), said crotch region (3) interconnecting the front (4) and the rear (2) region; a longitudinal axis (L) which extends from the front region (4) over the crotch (3) region to the rear (2) region, and a transverse axis (T) which is generally perpendicular to the longitudinal axis (L);

F3 whereby the chassis (5) comprises two transversely opposed side edges (6, 7) substantially extending along the longitudinal axis (L), and a front edge (8) and a rear edge (9) at respectively the front region (4) and rear region (2), which front edge (8) and rear edge (9) substantially extend along the transverse axis (T);

F4 the absorbent article (1) further comprising at least one front side panel (12, 13) attached to the front region (4) and at least one rear side panel (11, 14) attached to the rear region (2), whereby said front (12, 13) and rear (11, 14) side panel comprises a proximal edge (29) and a distal edge (20) which are transversely opposed, and an upper edge (22) and a lower edge (21), each extending between the proximal (29) to the distal (20) edge, the upper edge (22) being located closer to the front edge (8) or rear edge (9) of the chassis (5) than the lower edge (21) for respectively a front side panel (12, 13) and a rear side panel (11, 14); wherein the proximal (29) and the distal (20) edge substantially run parallel to each other along the longitudinal axis (L) and

F5 whereby the upper edge (22) of the front (12, 13) and the rear (11, 14) side panel makes a non-zero angle alpha with the transverse axis (T), whereby the lower edge (21) of the front (12, 13) and the rear (11, 14) side panel makes an angle beta with the transverse axis (T),

characterized in that

F6 the angle beta is larger than the angle alpha.

Claim 1 of auxiliary requests I and II each read as for claim 1 of the main request.

Claim 1 of auxiliary request III reads as for claim 1 of the main request with the following feature appended at the end of the claim:

"whereby the at least one front side panel (12, 13) and the at least one rear side panel (11, 14) have a substantially trapezoidal shape".

Claim 1 of auxiliary request IV reads as for claim 1 of

auxiliary request III with the following feature appended at the end of the claim:

"wherein a length, measured along the longitudinal axis (L), of the distal edge of the at least one front side panel (12, 13) is larger than a length, measured along the longitudinal axis (L), of the distal edge of the at least one rear side panel (11, 14)".

Claim 1 of auxiliary request V reads as for claim 1 of auxiliary request III with the exception of features F4 and F5 which read as follows:

"F4 the absorbent article (1) further comprising two front side panels (12, 13) attached to the front region (4), one on each transversely opposed side edge thereof, and two rear side panels (11, 14) attached to the rear region (2), one on each transversely opposed side edge thereof, whereby said front (12, 13) and rear (11, 14) side panels comprises a proximal edge (29) and a distal edge (20) which are transversely opposed, and an upper edge (22) and a lower edge (21), each extending between the proximal (29) to the distal (20) edge, the upper edge (22) being located closer to the front edge (8) or rear edge (9) of the chassis (5) than the lower edge (21) for respectively a front side panel (12, 13) and a rear side panel (11, 14); wherein the proximal (29) and the distal (20) edge substantially run parallel to each other along the longitudinal axis (L) and

F5 whereby the upper edge (22) of the front (12, 13) and the rear (11, 14) side panels makes a non-zero angle  $\alpha$  with the transverse axis (T), whereby the lower edge (21) of the front (12, 13) and the rear (11, 14) side panels makes an angle  $\beta$  with the transverse axis (T)".



Claim 1 of auxiliary request VI reads as for claim 1 of auxiliary request V with the following feature appended:

"wherein a length, measured along the longitudinal axis (L), of the distal edge of each of the front side panels (12, 13) is larger than a length, measured along the longitudinal axis (L), of the distal edge of each of the rear side panels (11, 14)".

IX. The appellant's arguments relevant to the present decision may be summarised as follows:

*Main request*

The subject-matter of claim 1 was novel over D1. D1 failed to disclose the front side panels (ear flaps 62) having an angle beta larger than the angle alpha. Figure 1 was a schematic drawing of the absorbent article and did not allow this relationship to be extracted therefrom. The angle beta being larger than the angle alpha was unambiguously disclosed solely for the rear side panels. Whilst T 0748/91 indeed found that a schematic figure could allow relative dimensions to be derived therefrom, the dimensions in that decision were found to be essential features of the claimed invention. Conversely, in D1 the ear flaps were not essential to the invention and so could not unambiguously be seen to be reliably depicted in Fig. 1.

*Auxiliary request I, II*

Since claim 1 of each of these requests was identical to claim 1 of the main request, the same arguments

applied and the subject-matter of claim 1 was novel.

*Auxiliary request III*

The subject-matter of claim 1 was novel over D1 for the same reasons as for claim 1 of the main request.

*Auxiliary request IV*

The features newly added to claim 1 found basis in paragraph [0134] of the application as filed.

*Auxiliary request V*

The subject-matter of claim 1 was novel over D1 for the same reasons as for claim 1 of the main request.

*Auxiliary request VI*

Similarly to claim 1 of auxiliary request IV, the subject-matter of claim 1 found basis in paragraphs [0111] and [0134] of the application as filed.

- X. The arguments of the respondents (opponent I and opponent II) relevant to the present decision may be summarised as follows:

*Main request*

The subject-matter of claim 1 lacked novelty over D1. Fig. 1 should be seen as a simplified construction drawing and unambiguously disclosed the angle beta of the front side panels (ear flaps 62) being larger than the angle alpha. No exact dimensions had to be extracted from Fig. 1, rather solely the relative size of angles alpha and beta. Being a plan view onto the

article, Fig. 1 unambiguously disclosed the claimed angle relationship for the skilled person. This was further reinforced by the length of the lower edge of the ear flaps being visibly greater than that of the upper edge.

*Auxiliary requests I, II and III*

The subject-matter of claim 1 of each of these requests was also not novel over D1.

*Auxiliary request IV*

The subject-matter of claim 1 failed to meet the requirement of Article 123(2) EPC. A disclosure of the trapezoidal shape feature and the angle beta being larger than the angle alpha was not disclosed in combination with the further features of claim 1 in the application as filed.

*Auxiliary requests V and VI*

The subject-matter of claim 1 of these requests failed to overcome the objections to claim 1 of auxiliary requests III (Article 54 EPC) and IV (Article 123(2) EPC) respectively.

**Reasons for the Decision**

1. *Main request*

1.1 *Novelty, D1*

1.2 D1 discloses the features of claim 1 as follows, the references in parentheses relating to D1:

F1 A disposable absorbent incontinence article (20) (Figure 1; page 6, last paragraph onwards) comprising: a liquid permeable topsheet (24), a liquid impermeable backsheet (26) and an absorbent core (28) positioned in between the topsheet (24) and the backsheet (26), whereby the topsheet (24), backsheet (26) and absorbent core (28) form a chassis (assembly 22) of the absorbent article (20) (Figure 1 and paragraph spanning pages 6 and 7);

F2 the absorbent article (20) further comprising a front region (52), a rear region (50) and a crotch region (54), said crotch region (54) interconnecting the front (52) and the rear (50) region; a longitudinal axis (100) which extends from the front region (52) over the crotch (54) region to the rear (50) region, and a transverse axis (102) which is generally perpendicular to the longitudinal axis (100; see Figure 1 and first full paragraph on page 7);

F3 whereby the chassis (22) comprises two transversely opposed side edges (56) substantially extending along the longitudinal axis (100), and a front edge (58) and a rear edge (58) at respectively the front region (52) and rear region (50), which front edge (58) and rear edge (58) substantially extend along the transverse axis (102; see Figure 1 and first full paragraph on page 8);

F4 the absorbent article (20) further comprising at least one front side panel (ear flaps 62) attached to the front region (52; see Fig. 1; paragraph bridging pages 14/15) and/or at least one rear side panel (30) attached to the rear region (50), whereby said rear side panel (30) comprises a proximal edge (80) and a distal edge (82) which are transversely opposed, and an upper edge (90) and a lower edge (96), each extending between the proximal (80) to the distal (82) edge, the

upper edge (90) being located closer to the rear edge (58) of the chassis (22) than the lower edge (96) for a rear side panel (30); wherein the proximal (80) and the distal (82) edge substantially run parallel to each other along the longitudinal axis (100) (Figures 1 and 2 and page 15, first full paragraph onwards);

F5 whereby the upper edge (90; see Figure 3) of the rear side panel (30) makes a non-zero angle alpha (angle A; see Figure 4) with the transverse axis (104), whereby the lower edge (96; see Figures 2 or 3) of the rear side panel (30) makes an angle beta (angle B) with the transverse axis (104; see Figs. 1 and 4; first full paragraph on page 16 and the first full paragraph on page 17); and

F6 the angle beta (angle B; see Figure 4) is larger than the angle alpha (angle A; see Figure 4).

1.3 The appellant's argument that D1 failed to disclose the front side panels (ear flaps 62) having an angle beta larger than the angle alpha is not accepted. The Board concurs with the appellant that Fig. 1 is a schematic drawing of the absorbent article, yet nonetheless finds the figure to unambiguously disclose the angle beta to be larger than the angle alpha for both the rear side panels (30) and the ear flaps (62). Simply through visual appreciation of the angles subtended by the upper and lower edges of the ear flaps 62 in Fig. 1, the skilled person would clearly see that the angle formed between each lower edge of the ear flaps (i.e. the edge closer to the transverse axis 102) and the transverse axis, is larger than the angle formed between the upper edge of the ear flaps (i.e. the edge further away from the transverse axis 102) and the transverse axis. As also indicated by opponent I with reference to Figure 1, the length of the lower edge of the ear flaps (i.e. the edge closer to the transverse

axis 102) is visibly greater than that of the upper edge, this geometrically also reinforcing that the angle beta is larger than the angle alpha for the ear flaps 62 of D1.

- 1.4 The Board does not accept the appellant's contention, with reference to T 0748/91, that a schematic figure allowed relative dimensions to be derived therefrom solely if such relative dimensions were disclosed to be essential features of the claimed invention. Rather, the primary consideration in deciding what can be seen as known from a figure is what the skilled person sees to be clearly and unambiguously disclosed therein. This would not usually include specific dimensions due to the schematic nature of figures in patents, but might allow relative dimensions between two or more elements to be derived, if the specific figure could be seen to deliberately depict such a relationship.

But even following the reasoning from T 748/91, it was not contested by the appellant that the corresponding different angles A and B for the rear side panels 30 were indeed (deliberately) depicted in Figures 1 to 5 as well as discussed on pages 15 and 16 of the description. Since the side panels are discussed in detail and can thus be seen as a relevant feature of the invention, the skilled person would consider the union of these side panels to the ear flaps also to be a relevant aspect of D1 as these are functionally and structurally related. The skilled person would thus derive that the shape of the matching ear flaps, whose angle difference is noticeably bigger than that of angles A and B in Figure 1, is not accidental and has been deliberately depicted so.

The drafting of the ear flaps 62 in Fig. 1, and in particular the length and angle to the transverse axis subtended by the upper and lower edges, therefore clearly depicts the angle beta to be greater than the angle alpha. This is not only for a single ear flap but indeed for the ear flap on each side of the absorbent article. The Board can thus but see this as a deliberate depiction in Fig. 1 of the upper and lower edges of the ear flaps 62 forming an angle beta larger than the angle alpha.

1.5 In summary, therefore, all the features of claim 1 are known from D1 such that its subject-matter lacks novelty.

1.6 The main request is thus not allowable.

2. *Auxiliary requests I and II*

2.1 *Novelty, D1*

2.2 Claim 1 of each of these requests is identical to claim 1 of the main request. The novelty conclusion based on D1 to claim 1 of the main request thus applies *mutatis mutandis* to claim 1 of each of these requests. The appellant also did not argue otherwise.

2.3 The subject-matter of claim 1 of each of auxiliary requests I and II thus lacks novelty.

2.4 Auxiliary requests I and II are thus not allowable.

3. *Auxiliary request III*

3.1 *Novelty, D1*

3.2 The feature added to claim 1 relative to claim 1 of the foregoing requests, that at least one of the front and one of the rear side panels have a substantially trapezoidal shape, is known from Fig. 1 of D1. To the Board's preliminary opinion given in point 4.4 of its communication under Article 15(1) RPBA that the subject-matter of claim 1 thus lacked novelty over D1, the appellant referred only to its written submissions and presented no counter-argument at oral proceedings.

3.3 The Board thus confirms its preliminary opinion herewith, that the subject-matter of claim 1 lacks novelty.

3.4 Auxiliary request III is thus not allowable.

4. *Auxiliary request IV*

4.1 *Article 123(2) EPC*

4.2 The appellant argued that the basis for claim 1 was claims 1 and 7 as filed in combination with paragraph [0134] (erroneously referred to as paragraph [0142] by the appellant in its written submissions) of the published application. This basis is not persuasive, since, as indicated in point 5.2 of the Board's preliminary opinion, the features of claim 1 extracted from paragraph [0134] are part of a disclosure of a preferred embodiment which lacks a direct and unambiguous disclosure in combination with at least the features recited in claim 1 regarding the angle beta being larger than the angle alpha and the front and rear side panels having a trapezoidal shape.



- 4.3 The subject-matter of claim 1 therefore does not meet the requirement of Article 123(2) EPC.
- 4.4 Auxiliary request IV is thus not allowable.
- 5. *Auxiliary request V*
- 5.1 *Novelty, D1*
- 5.2 Relative to claim 1 of auxiliary request III, claim 1 additionally defines that the absorbent article has two front side panels, one on each transversely opposed side edge, and two rear side panels, one on each transversely opposed side edge. This is also clearly disclosed in Fig. 1 of D1 such that the subject-matter of claim 1 lacks novelty. This conclusion was also given in point 6.5 of the Board's communication under Article 15(1) RPBA.
- 5.3 At oral proceedings, the appellant merely referred to its arguments in defence of claim 1 of the main request which, see points 1.3 and 1.4 above, were found not to be persuasive.
- 5.4 The subject-matter of claim 1 thus lacks novelty.
- 5.5 Auxiliary request V is not allowable.
- 6. *Auxiliary request VI*
- 6.1 *Article 123(2) EPC*
- 6.2 With claim 1 including the amendments made to claim 1 of each of auxiliary requests IV and V, its subject-matter at least fails to meet the requirement of Article 123(2) EPC. No arguments beyond those presented

for auxiliary request IV were presented by the appellant in this regard.

6.3 The subject-matter of claim 1 at least therefore does not meet the requirement of Article 123(2) EPC.

6.4 Auxiliary request VI is thus not allowable.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

P. Cipriano

Decision electronically authenticated