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**Datasheet for the decision  
of 8 April 2025**

**Case Number:** T 0673/23 - 3.2.06

**Application Number:** 17196434.9

**Publication Number:** 3403627

**IPC:** A61F13/475, A61F13/49,  
A61F13/511, A61F13/534,  
A61F13/15

**Language of the proceedings:** EN

**Title of invention:**

ABSORBENT ARTICLE WITH CHANNELS AND METHOD FOR MANUFACTURING  
THEREOF

**Patent Proprietor:**

Drylock Technologies NV

**Opponents:**

Ontex BV  
GDM S.p.A.  
Petersen, Frank  
Fippi SpA

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a)

RPBA 2020 Art. 12(3), 12(5)

**Keyword:**

Novelty - main request (no)

Discretion not to admit submission - requirements of Art.

12(3) RPBA 2020 met (no)

**Decisions cited:**

T 1041/21

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number:** T 0673/23 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 8 April 2025**

**Appellant:**

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 16 February  
2023 revoking European patent No. 3403627  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** 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. 3 403 627.
- II. With its grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request), in the alternative that the patent be maintained according to one of auxiliary requests 1 to 17 all as filed with the statement of grounds of appeal.
- III. The respondents 1, 3 and 4 (opponents 1, 3 and 4) requested that the appeal be dismissed.
- IV. The following documents are relevant to the present decision:  
  
D1 US-A-2007/0246147
- 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 appeared to lack novelty over D1. It further indicated that none of the auxiliary requests were likely to be admitted.
- VI. With respective submissions each dated 4 April 2025, respondents 3 and 4 indicated that they would not attend the scheduled oral proceedings.
- VII. Oral proceedings were held before the Board on 8 April 2025 during which the appellant withdrew auxiliary requests 1 to 13 and 15 to 17.

At the close of the oral proceedings the parties' requests were thus as follows:

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request), in the alternative that the patent be maintained according to auxiliary request 14 filed with the statement of grounds of appeal.

The respondents 1, 3 and 4 each requested that the appeal be dismissed.

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

A method for manufacturing an absorbent article, said method comprising:

- a. guiding a first sheet material (110) along a rotating member (10), wherein a surface (15) of said rotating member is provided with a pattern with at least one suction zone (13) and at least one non-suction zone (11);
- b. applying an absorbent material on said first sheet material on the rotating member;
- c. locally removing the absorbent material applied on at least one attachment portion (14) of the first sheet material located above the at least one non-suction zone, such that at least one remaining portion of the first sheet material located above the at least one suction zone is covered with absorbent material and substantially no absorbent material is present on the at least one attachment portion (14);
- d. applying a second sheet material (120) on top of the absorbent material on the first sheet material; wherein one of said first and second sheet material is a top core wrap sheet material, and the other one is a back core wrap sheet material;

e. attaching said first sheet material (110) to said second sheet material (120) at least in the at least one attachment portion (14), and such that at least one attachment zone (140) is formed.

Claim 1 of auxiliary request 14 reads as for claim 1 of the main request with the following feature appended:

"wherein the locally removing of the absorbent material is done by a first roller brush (16) having bristles of a flexible plastic material".

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

The subject-matter of claim 1 of the main request was novel over D1, which failed to disclose feature c. The expression 'locally' had a technical meaning of 'at a specific location' and this excluded material being removed beyond this locality. It excluded absorbent material being removed across the entire deposit of absorbent material. If 'locally removing' included material also being removed outside the local area, this would ignore the relevance of the term 'locally'. The qualification in claim 1 that absorbent material was locally removed 'such that .....' clarified the consequence of the local removal. The skilled person understood that the suction zones in claim 1 would maintain their function at all times such that this was not simply a label for a particular part of the rotating member's surface. The description supported the expression 'locally removing' meaning that absorbent material was removed solely locally. For example, the Fig. 28 embodiment of the patent used flexible bristles which would only remove absorbent material from the non-suction zones. The mounds of

absorbent material indicated in Fig. 28 were not technically relevant, the draftsman simply intending to indicate an irregular surface. Fig. 29 also showed absorbent material being removed solely from the non-suction zones. The shorter bristles 22c in Fig. 30 merely redistributed absorbent material in the suction zones rather than removing material. Fig. 31 also failed to disclose material being removed from anywhere but the non-suction zones.

D1 failed to disclose absorbent material being removed solely from the nubs 34 such that it failed to disclose the 'locally removing' method step of feature c.

Auxiliary request 14 should be admitted. Point VIII of the grounds of appeal made specific reference to the proprietor's submission of 10 November 2022 which addressed the inventive step of the subject-matter of claim 1 (auxiliary request 8 before the opposition division) when starting from D1 and combining the knowledge of the skilled person with this. The opposition division had failed to take these arguments into account and the conclusions it reached were also disagreed with.

- X. The respondents' arguments relevant to the present decision may be summarised as follows:

The subject-matter of claim 1 of the main request lacked novelty over D1. Claim 1 did not recite local removal of absorbent material as being solely from the non-suction zones. The suction zones / non-suction zones of claim 1 were merely labels for these zones since no vacuum was recited to be applied to the suction zones. Fig. 27 of the patent depicted areas 11', 12' and 13' of the rotating member 10 not under vacuum yet still referred to these as suction or non-



suction zones. These terms were thus not related to a vacuum always being applied to the zones. The description of the patent failed to support 'locally removing' to mean removal of absorbent material solely from the non-suction zones. In relation to Fig. 28, para. [0264] disclosed heaps of absorbent material above the suction zones. Even with flexible bristles 22, material above the suction zones would be removed along with that above the non-suction zones. The bristle flexibility was stated in the description as being to avoid damage to the first sheet material rather than to avoid removal of absorbent material. There was no disclosure of bristles redistributing absorbent material in the patent, but this would anyway also be local removal of material.

Auxiliary request 14 should not be admitted. The request was not substantiated in the grounds of appeal and a mere reference to submissions before the opposition division did not explain why the appellant wished the decision of the opposition division to be reversed.

## **Reasons for the Decision**

### **1.       Main request**

*Articles 100(a) and 54 EPC, Novelty over D1*

1.1       The ground for opposition under Article 100(a) EPC is prejudicial to maintenance of the patent as granted.

1.2       The appellant argued that the subject-matter of claim 1 was novel since feature c was not known from D1,

particularly when read together with features a and b.

1.3 As regards feature c of claim 1, the 'locally removing' of absorbent material is qualified with the condition 'such that at least one remaining portion of the first sheet material located above the at least one suction zone is covered with absorbent material and substantially no absorbent material is present on the at least one attachment portion'. This qualifier thus unambiguously indicates how 'locally removing absorbent material' in claim 1 is to be understood i.e. that, after removal, absorbent material is not present on the attachment portion(s) but is present at the remaining portion(s). As to the appellant's contention that feature c should be read together with features a and b, this is not denied; the features of a claim should always be read together. Yet, features a and b have no bearing on how the expression 'locally removing' in feature c is to be understood. Features a and b merely describe how absorbent material is to be applied to a first sheet material which is guided along a rotating member, the surface of which is provided with a pattern of suction zone(s) and non-suction zone(s). No indication, implicit or otherwise, is provided by features a and b as to the local removal of absorbent material being merely from the attachment portion located over a non-suction zone, rather the nature of this local removal is detailed by the 'such that' qualifier discussed above.

1.4 The method for manufacturing an absorbent core according to D1 (see Fig. 1) positions a first web 22 onto a forming surface 24 of a forming drum 56 having a plurality of protruding nubs 34 (see para. [0034]). Absorbent material 26 is deposited onto the first web across its entire width to form an absorbent core web

(see para. [0042]). The method subsequently employs a scarfing system to remove excess absorbent material from the absorbent core web (see paras. [0043] to [0044]), resulting in a substantially flat surface of the absorbent material on the web. The portions of the absorbent core web positioned above the nubs can be substantially cleared of absorbent material to form bonding areas 40 (see para. [0066]), the web portions surrounding the bonding areas maintaining a covering of absorbent material. This unambiguously anticipates feature c of claim 1 as follows, references in parentheses referring to D1:

Locally removing (by way of the scarfing roll 62) the absorbent material (26) applied on at least one attachment portion (bonding area 40) of the first sheet material (22) located above the at least one non-suction zone (i.e. at the local positions of the nubs, 34), such that at least one remaining portion of the first sheet material located above the at least one suction zone (portion of first web 22 surrounding the nubs 34) is covered with absorbent material (26) and substantially no absorbent material is present on the at least one attachment portion (bonding area 40).

- 1.5 The appellant's contention that 'locally' had a technical meaning of 'at a specific location only' and 'not everywhere', and that this excluded material being removed beyond this locality does not reflect the full context in which 'locally removing' is utilised in claim 1, as argued by the respondent. Feature c recites absorbent material being locally removed yet with the qualifier 'such that at least one remaining portion of the first sheet material located above the at least one suction zone is covered with absorbent material and substantially no absorbent material is present on the

at least one attachment portion'. This qualifier thus indicates how the expression 'locally removing' is to be understood in the context of claim 1, which does not limit the absorbent material removal to be solely from the attachment portion provided that any removal of absorbent material from the remaining portion results in absorbent material nonetheless still being present at the remaining portion. Contrary to the opinion of the appellant, therefore, feature c of claim 1 does not exclude absorbent material being removed beyond the extent of the attachment portion(s) of the first sheet material. The appellant's argument that such removal would then simply be 'everywhere' is likewise not accepted also at least for this reason.

- 1.6 The appellant's further argument that, in the patent, the absorbent material positioned above the suction zone(s) would not be removed by the roller brush 16 due to the vacuum acting to keep the absorbent material in position is not persuasive. As also indicated by the respondent, claim 1 fails to recite any vacuum being applied to the suction zone(s) 13 of the rotating member 10. As was discussed, Fig. 27 of the patent depicts areas 13' of the rotating member 10 not under vacuum, these areas yet still being referred to as 'suction zones' (see col. 47, lines 34 to 44). Therefore, even reflecting a more detailed disclosure in the description, a vacuum is not necessarily applied to all the areas labelled 'suction zone(s)' in claim 1. Furthermore, even if a vacuum were applied to the suction zone(s) 13, it is not accepted, from a technical point of view, that this would prohibit the roller brush 16 from removing at least some of the absorbent material deposited over the suction zone(s) along with substantially all that deposited on the attachment portions 14. Nowhere is it indicated in the

patent, for example, that the level of vacuum would be so high that no material on the upper surface of the deposited absorbent material would be removed by the roller brush. Further explanation of this is given below in relation to e.g. the embodiment depicted in Fig. 28.

Consequently, even the patent itself fails to support the appellant's contention that, in the context of claim 1, 'locally removing' means removing absorbent material solely from the attachment portion.

- 1.7 The appellant's reference to claim 6 as granted to support its contention that no absorbent material was removed from the remaining portion through the 'locally removing' step in claim 1 is not accepted. Claim 6 indeed recites that the claimed method further comprises scraping the absorbent material applied on the at least one remaining portion by a second roller brush, such that surface of the absorbent material is substantially even, yet this does not preclude absorbent material already being removed from the remaining portion in method step c of claim 1, as already extensively explained above.
- 1.8 With regard to Fig. 28 of the patent, the appellant's argument that the flexible bristles would only remove absorbent material from the attachment portions (corresponding to the non-suction zones) is not accepted. Fig. 28 shows absorbent material F distributed across both suction 13 and non-suction zones 11,12 of the first sheet material 110, in fact more absorbent material depicted to be located in the suction zones 13. The flexible bristles 22 of the first roller brush 16 would thus, on rotation, evidently brush absorbent material from both the suction and the

non-suction zones, rather than merely from the non-suction zones as alleged by the appellant. Indeed, as emphasised by the respondent during the oral proceedings, column 47, lines 46 to 55 of the patent explains that, as the roller brush rotates, the bristles 'scrape or sweep the absorbent material applied on the first sheet material' without any inference that such scraping would not occur across the whole of the unevenly distributed absorbent layer. Similarly, column 47, line 55 to column 8, line 1 of the patent describes that the bristles of the roller brush may comprise a flexible material 'such that damage to the first sheet material can be prevented or reduced during removal of absorbent material', thus clearly describing the relationship of the bristle flexibility to that of the sheet and providing no support for the appellant's contention that the flexibility of the bristles was instead made to be such that removal of absorbent material in the suction zones was avoided.

- 1.9 The appellant's further contention that the shorter bristles 22c in Fig. 30 merely 'redistributed' absorbent material in the suction zones rather than removing material is also not accepted. Para. [0266] of the patent describes the exemplary embodiment of Fig. 30 in terms of shorter and less flexible bristles 22c over the suction zones 13 than the bristles 22a and 22b over the non-suction zones. There is no disclosure of the appellant's alleged 'redistribution' of absorbent material in the suction zones and, even if this were to happen as alleged, this would anyway be removal of absorbent material from one location for distribution to another and not a removal only over the attachment portions, thus also anticipating the 'locally removing'

step of feature c.

- 1.10 Finally the appellant also referred to Fig. 31 in support of how the expression 'locally removing' should be understood. However, this also fails to unambiguously disclose material being removed solely from the non-suction zones. As the respondent also pointed out, relative to Figs. 28 to 30 which showed heaps of absorbent material over the suction zones, Fig. 31 depicted the absorbent material having an essentially flat surface with an air jet system 'configured to blow air onto the attachment portions 14 to remove the absorbent material F thereon' (see para. [0268]). Yet, the absence of the heaps of absorbent material over the suction zones of Fig. 31 suggests that the air jet system does not remove absorbent material solely from the attachment portions 14. Although the appellant argued that this would be seen as a schematic depiction and probably a draughtsman's error, this simply cannot be concluded from the information available.
- 1.11 In summary, therefore, even considering the description of the patent to interpret what might be intended with the expression 'locally removing' in feature c of claim 1, a removal of absorbent material solely from the attachment portion(s) is not derivable. The Board thus concludes that D1 discloses feature c of claim 1 as indicated in points 1.3 to 1.4 above. The subject-matter of claim 1 thus lacks novelty over D1 and the ground for opposition under Article 100(a) in conjunction with Article 54 EPC is prejudicial to maintenance of the patent as granted.

2. *Auxiliary request 14*

*Admittance*

2.1 According to Article 12(3) RPBA, the statement of grounds of appeal and the reply shall contain a party's complete appeal case. Additionally, it should *inter alia* set out clearly and concisely the reason why it is requested that the decision under appeal be reversed.

2.2 In point VIII of the appellant's grounds of appeal, its complete appeal case with respect to auxiliary request 14 reads as follows:

"Appellant disagrees with the decision in view of auxiliary requests 7-17 and submits that previously present arguments have not been taken into account by the opposition division in a just manner.

All arguments pertaining to the respective auxiliary requests as elaborated in our written submissions dated 25 October 2021, written submissions dated 10 November 2022, and during the oral proceedings dated 11-12 January 2023 are maintained."

2.3 From these two sentences which form the appellant's complete appeal case with respect to auxiliary request 14, no explanation has been given as to why the decision taken by the opposition division is incorrect. Merely referring to submissions made before the opposition division does not provide a substantiation allowing the Board and the opponent to understand why the opposition division's decision is wrong. Furthermore, no indication has been given of which specific parts of the submissions made before the opposition division should be considered as



substantiation of auxiliary request 14. This finding follows established case law (see for example T 1041/21, Reasons 5).

- 2.4 At oral proceedings before the Board, the appellant referred to its submission of 10 November 2022, in particular the arguments regarding inventive step of the subject-matter of claim 1 (of auxiliary request 8 before the opposition division) when starting from D1 and combining the skilled person's knowledge with this. This specific reference was not provided as substantiation in the grounds of appeal and, even if it had been, still fails to indicate why the opposition division's decision on this request should be reversed. On questioning by the Chairman as to which arguments in the appellant's submissions had not been taken into account by the opposition division, the appellant was unable to indicate any. As to the appellant disagreeing with the conclusions reached by the opposition division, absent an indication as to why the conclusion reached by the opposition division was incorrect, the Board cannot see a substantiation of auxiliary request 14 in the grounds of appeal.
- 2.5 Failing to meet the requirements of Article 12(3) RPBA, the Board exercised its discretion under Article 12(5) RPBA not to admit auxiliary request 14.

## Order

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

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated