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**D E C I S I O N**  
of 9 January 1998

**Case Number:** T 0198/94 - 3.2.2

**Application Number:** 88105306.0

**Publication Number:** 0286030

**IPC:** A61F 13/15

**Language of the proceedings:** EN

**Title of invention:**

Article including a refastenable adhesive tape fastening system

**Patentee:**

Kimberly-Clark Corporation

**Opponent:**

The Procter & Gamble Company

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

-



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Boards of Appeal

Chambres de recours

Case Number: T 0198/94 - 3.3.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 9 January 1998

**Appellant:**  
(Opponent)

The Procter & Gamble Company  
One Procter & Gamble Plaza  
Cincinnati, Ohio 45202 (US)

**Representative:**

Canonici, Jean-Jacques  
Procter & Gamble European Service GmbH  
Sulzbacher Strasse 40-50  
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**Respondent:**  
(Proprietor of the patent)

Kimberly-Clarke Corporation  
401 North Lake Street  
Neenah  
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**Representative:**

Diehl, Hermann O. Th., Dr.  
Diehl, Glaeser, Hiltl & Partner  
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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 4 January 1994  
rejecting the opposition filed against European  
patent No. 0 286 030 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** H. J. Seidenschwarz  
**Members:** M. J. M. Bidet  
C. Holtz

## Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal received on 4 March 1994 against the decision of the opposition division dispatched on 4 January 1994 rejecting the opposition against the patent No. 0 286 030. The appeal fee was paid on 4 March 1994 and the statement of grounds of appeal received on 10 May 1994.

II. Claim 1 according to the patent as granted reads as follows:

"An article, comprising:

- an adhesive tape tab (40) having a peel force value of at least about 11.7N;
- a substrate layer (50) composed of a material having a matte finish and having a tensile load capacity which is substantially unable to prevent tearing thereof when said tab(40) is peeled from adhesive contact with the substrate layer (50); and
- a reinforcement layer (18), a first major surface(18a) of which is bonded to said substrate layer (50) and a second major surface (18b) of which is appointed for adhesive bonding with said adhesive tab (40), said reinforcement layer having a matte finish and a tensile strength of at least about 15 Mpa (about 2200 psi),
- said reinforcement layer (18) and said substrate layer (50) thereby forming a composite, reinforced substrate (56) having a composite load capacity tensile capable of withstanding a peeling removal of said adhesive tab therefrom substantially without tearing."

Independent Claim 8 as granted relates to an absorbent article including essentially all the features of the article according to Claim 1.

III. The reason given for the decision was that the grounds for opposition mentioned in Article 100(a) EPC did not prejudice the maintenance of the patent unamended having regard to following documents:

D1: GB-A-2 129 689

D2: US-A-3 867 940

D3: EP-B-0 080 647

D4: EP-A-0 212 284

D5: Luger "Lexikon der Technik"; 1961/1962, Vol. 8, page 392/393, table 2A,

since the following features of Claim 1 according to the claims analysis used in the decision under appeal:

-2 (a) a peel force value of at least about 11,7 N,

-3 (a) a substrate layer composed of a material having a matte finish,

-4 (c) a reinforcement layer having a matte finish, and

-4 (d) the reinforcement layer having a tensile strength of at least about 15 MPa (about 2200 psi),

neither were anticipated by any of the documents D1 to D5, nor rendered obvious by a combination of the teaching of these documents.

IV. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

In support of the appeal, the appellant argued that

- all the features of Claim 1, except features 2(a) and 4(d) were obvious from a combination of the teachings inferred by the documents D1 and D2 or the documents D2 and D3;

reference was also made to a new document:

D6: US-A-3 630 201

which was not cited as a prior art document but only to clarify the terminology used in the patent in suit, namely: that an embossed layer should have had a matte finish and consequently the embossed reinforcement layer according to documents D1 and D2 equally had a matte finish.

- the remaining features 2 (a) and 4(d) represented to the skilled person a choice of material and values which values had been selected from the range being generally available on the market; documents D5 and D6 and the following documents

-D7 : US-A-4 296 750 (cited for the first time during the oral proceedings before the opposition division), and

- Declarations of Mr. Derek M. Brewis and Mr. Hiroaki Shikata (filed during the appeal procedure)

were referred to in support of these arguments.

- The cited prior art was also relevant in the same way to the subject-matter of claim 8 as it was vis-a-vis the subject-matter of Claim 1.

V. The respondent requested that the appeal be dismissed (main request) or that the patent be maintained on the basis of Claims 1 and 8 as submitted with letter dated 13 November 1997 (auxiliary request).

It denied that the subject-matter of Claims 1 and 8 lacked inventive step, arguing that the features 2(a), 4(c) and 4(d) were not disclosed in any of the documents cited by the appellant and that at least the features 2(a) and 4(d) were not suggested by the prior art.

VI. Oral proceedings were held on 9 January 1998. As announced in a letter of 3 December 1997, the duly summoned appellant did not attend the oral proceedings. In accordance with Rule 71(2) EPC the proceedings continued without it.

### Reasons for the Decision

1. The appeal is admissible.
2. *Late-filed documents*

Document D6 has been cited by the appellant **only** to clarify the terminology used in the patent in suit. Furthermore, the disclosure of this document is less relevant than the disclosure of the documents D1, D2 and D3. Having regard to document D7, the Board agrees with the line taken by the opposition division in its

decision, namely that the range of values disclosed in document D7 and the one in the patent in suit are not comparable (see page 10, last two lines to page 11, lines 1 to 8).

The declarations contain only general allegations with regard to plastic films having particular strength and surface characteristics which could possibly be used in the technical field of the patent in suit. Such allegations presented for the first time with the statement of grounds of appeal cannot be considered, since they are not essential for the assessment of inventive step.

3. *Patentability*

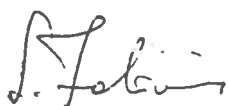
The Board agrees with the decision of the opposition division, for the reasons set out therein on pages 3 to 11, that none of documents D1 to D5 anticipates the subject-matter of claims 1 and 8, neither individually, nor in any combination and that therefore this subject-matter is novel and involves an inventive step within the meaning of Articles 54 and 56 EPC.

**Order**

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

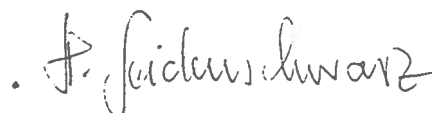
The appeal is dismissed.

The Registrar:



S. Fabiani

The Chairman:



H. Seidenschwarz

