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**D E C I S I O N**  
**of 19 November 1999**

**Case Number:** T 0375/96 - 3.2.2

**Application Number:** 87119040.1

**Publication Number:** 0272683

**IPC:** A61F 13/46

**Language of the proceedings:** EN

**Title of invention:**

Absorbent pad

**Patentee:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

The Procter & Gamble Company  
Mölnlycke AB

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

"Clarity (no)"

**Decisions cited:**

-

**Catchword:**

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Boards of Appeal

Chambres de recours

Case Number: T 0375/96 - 3.2.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.2**  
**of 19 November 1999**

**Appellant:** KIMBERLY-CLARK WORLDWIDE, INC.  
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**Respondent:** The Procter & Gamble Company  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 28 February 1996  
revoking European patent No. 0 272 683 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** W. D. Weiß

**Members:** D. Valle  
R. T. Menapace

## Summary of Facts and Submissions

I. The appellant (proprietor of the patent) filed on 29 April 1996 an appeal against the decision of the opposition division of 28 February 1996 to revoke the European patent No. 0 272 683 and paid the appeal fee on the same day. The statement setting out the grounds for appeal was received on 9 July 1996.

II. Opposition was filed against the patent as a whole by two opponents and based on Article 100(a) and Article 100(b) EPC. The amendments filed during the opposition proceedings were further objected to by opponent I in a letter of 12 January 1996 for lack of clarity (Article 84 EPC).

The opposition division held that the ground for opposition mentioned in Article 100(b) EPC (feasibility) did prejudice the maintenance of the patent in amended form.

III. Following a request from all parties, the Board set the oral proceedings for 19 November 1999. Together with the summons for oral proceedings the Board issued a communication stating in particular that the main issues to be dealt with during the oral proceedings would be clarity (Article 84 EPC) and feasibility (Article 100(b) EPC).

IV. At the end of the oral proceedings the requests of the parties were as follows:

The appellant (patentee) requested that the decision under appeal be set aside and that the patent be

maintained in amended form, namely according to the main or one of the two auxiliary requests as submitted and amended during the oral proceedings, each of them, as a subsidiary alternative, with the wording: "the hairy surface" instead of: "the fuzzy, hairy, fibrous surface".

The respondents I (opponent I) requested that the appeal be dismissed and, if the Board did not wish to revoke the patent in its entirety, that the following question (presented in his letter of 18 October 1999) be submitted to the Enlarged Board of Appeal:

"In a situation where the main request of the patent proprietor before the opposition division has been for maintenance of the patent in amended form and the opposition division has revoked the patent in its entirety, must an amended claim which would put the opponent in a worse situation than if the patent had been maintained in the form of the main request - e.g. by deleting a limiting feature of the claim - be rejected?"

The respondent II (opponent II) requested dismissal of the appeal.

V. Claim 1 according to the main request filed on 19 November 1999 during the oral proceedings reads as follows:

"An absorbent pad (12; 80; 90; 100; 110) comprising a liquid impermeable backing member (22),

an absorbent member (30) adjacent said backing member (22),

a flow zone control layer (28; 82; 92; 102; 114) adjacent the absorbent member (30) on the body side of said absorbent member (30) providing good fluid transfer along the flow zone control layer,

and a liquid pervious perforated liner (14) on the body side of said pad adjacent said flow zone control layer (28; 82; 92; 102; 114),

characterized in that

said flow zone control layer (28; 82; 92; 102; 114) is located only in the central portion of said pad (12; 80; 90; 100; 110) and has a fuzzy, hairy, fibrous surface (54),

said liner (14) is a bonded carded web of polyester, polypropylene, nylon or other heat-bondable fibers or a spunbonded polypropylene fabric which is perforated in the area of the flow zone control layer, and which after perforation has descendent fibers surrounding the raised perforation holes and forming loose elements, is oriented on the pad such that the descendent fibers displaced during perforating extend towards said flow zone control layer (28; 82; 92; 102; 114)

whereby the loose elements (52) are entangled with the fuzzy, hairy, fibrous surface (54) to aid in the transfer of liquid from the body side of said pad to the flow zone control layer (28; 82; 92; 102; 114),

and whereby the fuzzy, hairy, fibrous surface on the lower side of the flow zone control layer (28; 82; 92; 102; 114) aids in transfer of the liquid to the absorbent (30)".

Claim 1 according to the first auxiliary request reads as follows:

"An absorbent pad (12; 80; 90; 100; 110) comprising

a liquid impermeable backing member (22),

an absorbent member (30) adjacent said backing member (22),

a flow zone control layer (28; 82; 92; 102; 114) adjacent the absorbent member (30) on the body side of said absorbent member (30) providing good fluid transfer along the flow zone control layer,

and a liquid pervious perforated liner (14) on the body side of said pad adjacent said flow zone control layer (28; 82; 92; 102; 114),

characterized in that

said flow zone control layer (28; 82; 92; 102; 114) being located only in the central portion of said pad (12; 80; 90; 100; 110) has a fuzzy, hairy, fibrous surface (54);

said liner (14) is a bonded carded web of polyester, polypropylene, nylon or other heat-bondable fibers or a spunbonded polypropylene fabric which is perforated in

the area of the flow zone control layer, whereby the depth of its perforations (50) is greater than the thickness of said liner (14), and after perforation, has descendent fibers surrounding the raised perforation holes and forming loose elements, said liner is oriented on the pad such that liner material displaced during perforating extend towards said flow zone control layer (28; 82; 92; 102; 114),

whereby the loose elements (52) are entangled with the fuzzy, hairy fibrous surface (54) to aid in the transfer of liquid from the body side of said pad to the flow zone control layer (28; 82; 92; 102; 114),

and whereby the fuzzy, hairy, fibrous surface on the lower side of the flow zone control layer (28; 82; 92; 102; 114) aids in transfer of the liquid to the absorbent (30)".

Claim 1 according to the second auxiliary request reads as follows:

"An absorbent pad (12; 80; 90; 100; 110) comprising

a liquid impermeable backing member (22),

an absorbent member (30) adjacent said backing member (22),

a flow zone control layer (28; 82; 92; 102; 114) adjacent the absorbent member (30) on the body side of said absorbent member (30) providing good fluid transfer along the flow zone control layer,



and a liquid pervious perforated liner (14) on the body side of said pad adjacent said flow zone control layer (28; 82; 92; 102; 114),

characterized in that

said flow zone control layer (28; 82; 92; 102; 114) being located only in the central portion of said pad (12; 80; 90; 100; 110) has a fuzzy, hairy fibrous surface (54);

wherein said flow zone control layer (28; 82; 92; 102; 114) comprises a meltblown polymer and the coefficient of friction between said perforated liner (14) and said flow zone control layer (18; 82; 92; 102; 114) is between 0,7 and 1,1,

said liner (14) is a carded bonded web of polyester, polypropylene, nylon or other heat-bondable fibers or a spunbonded polypropylene fabric which is perforated in the area of the flow zone control layer, whereby the depth of its perforations (50) is greater than the thickness of said liner (14), and after perforation, has descendent fibres surrounding the raised perforation holes and forming loose elements,

said liner is oriented on the pad such that the liner material displaced during perforating extends towards said flow zone control layer (28; 82; 92; 102; 114)

whereby the loose elements (52) are entangled with the fuzzy, hairy fibrous surface (54) to aid in the transfer of liquid from the body side of said pad to the flow zone control layer (28; 82; 92; 102; 114),

and whereby the fuzzy, hairy, fibrous surface on the lower side of the flow zone control layer (28; 82; 92; 102; 114) aids in transfer of the liquid to the absorbent (30)".

The subsidiary alternative submissions are derivable from the foregoing by substitution of the words: "the fuzzy, hairy, fibrous surface" with the words: "the hairy surface".

VI. The appellant argued essentially as follows:

The opposition division found that the features in claim 1 of the main request: "the loose elements of the perforations are entangled with the fuzzy, hairy, fibrous surface" made the invention not feasible. The respondents further objected to this wording on the ground of lack of clarity. These features were however clear and sufficiently disclosed, see page 4, from line 44 of the description of the patent specification. From this passage it was evident that the cover sheet had perforations (50), whereby the material of the perforated sheet surrounded the raised perforation holes. The lower side of the perforations was further located in the area of the flow zone control layer. The perforation produced a frayed-out edge at the ends of the perforation hole, the loose elements of which became entangled with the flow-zone-control-layer. The person skilled in the art would know that he had, for example, to press the bodyside liner onto the flow zone control layer or vice versa in order to achieve such entanglement. The entanglement had the function of aiding the transfer of liquid and ensuring a great intermingling, improving the friction of the two

layers.

The respondents argued essentially as follows.

The term: "entanglement" used in all the submissions was not clear. There was no clear indication of a method to perform such entanglement. No indication was given as to the degree of entanglement either. On the basis of the patent specification there was no possibility to distinguish the entanglement from a simple contact. The terms: "the loose element aid in the transfer of liquid" was also too vague. No definite parameters were given. "Loose elements" contradicted: "entangled". The coefficient of friction has nothing to do with entanglement - an embossed material had for example high friction but not good entanglement.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Clarity*

The term: "(loose elements) are entangled..." contained in claim 1 of all the submissions is not clear and therefore not suitable to define the protection sought. In fact the patent specification does not contain any indication as to how to distinguish the so-called "entanglement" from the effect of the usual contact of the two layers (liner (14) and flow-zone-control-layer) when they are put one above the other. The liner (14) is made of a fiber web or fabric and the surface of the flow-zone-control-layer has a hairy surface. That means

that when the two layers are assembled one above the other, there is always a relatively good contact between the fibers of both layers. The Board was unable to find a clear distinction between such contact and the contact assured by the loose elements of the perforations which is defined as "entangled", also in consideration of the fact that the method which was supposed to achieve such "entanglement" consisted merely of the usual placing in contact of the two above-cited surfaces (see page 4, line 44 of the patent specification).

3. For the above reasons none of the sets of claims according to which the maintenance of the patent in amended form was sought fulfils the requirements of clarity within the meaning of Article 84 EPC.
4. In view of this finding and of the ensuing dismissal of the appeal the conditional request regarding the question of law raised by opponent I (see point IV, above) has become irrelevant and there is no need to refer this question to the Enlarged Board of Appeal.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

W. D. Weiß