

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [ ] To Chairmen and Members  
(C) [X] To Chairmen

**D E C I S I O N**  
**of 7 December 1999**

**Case Number:** T 0790/96 - 3.2.2

**Application Number:** 88902965.8

**Publication Number:** 0364454

**IPC:** A61F 13/15

**Language of the proceedings:** EN

**Title of invention:**

Device for the support of an absorbent article

**Patentee:**

Mölnlycke AB

**Opponent:**

Paul Hartmann Aktiengesellschaft

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 52, 56

**Keyword:**

"Inventive step (no)"

**Decisions cited:**

-

**Catchword:**

-



Europäisches  
Patentamt

European  
Patent Office

Office européen  
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0790/96 - 3.2.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.2**  
**of 7 December 1999**

**Appellant:** Mölnlycke AB  
(Proprietor of the patent) 405 03 Göteborg (SE)

**Representative:** Kierkegaard, Lars-Olov  
Albihns Patentbyrå Stockholm AB  
Box 5581  
114 85 Stockholm (SE)

**Respondent:** Paul Hartmann Aktiengesellschaft  
(Opponent) Paul-Hartmann-Strasse  
89522 Heidenheim (DE)

**Representative:** Dreiss, Fuhlendorf, Steimle & Becker  
Patentanwälte  
Postfach 10 37 62  
70032 Stuttgart (DE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 1 July 1996  
revoking European patent No. 0 364 454 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. On 28 August 1996, the proprietor of the patent lodged an appeal against the decision of the opposition division of 1 July 1996 to revoke the European patent No. 364 454. The statement setting out the grounds for appeal was received on 8 November 1996. The fee for appeal was paid on 29 August 1996.

II. The patent was opposed on the grounds of lack of novelty and inventive step (Article 100(a) EPC) and of insufficient disclosure (Article 100(b) EPC).

The opposition division held that the claimed subject-matter did not involve an inventive step and therefore, the patent had to be revoked.

III. In the appeal stage the discussion was based on the documents:

D2: GB-A-1 200 177, and

D4: US-A-4 022 212,

already cited during the opposition proceedings, and on the documents:

D9: US-A-3 441 025 cited in the description and in the search report, and

D10: GB-A-1 263 913,

cited by the appellant.

IV. Oral proceedings were held on 7 December 1999; at the end of which the requests of the parties were as follows:

The appellant (patentee) requested that the decision under appeal be set aside and the patent be maintained in amended form according to:

- the main and first auxiliary request,
- fourth, fifth and sixth auxiliary request (as amended),

all as submitted during the oral proceedings.

The respondent (opponent) requested that the appeal be dismissed.

V. Claim 1 according to the main request filed during the oral proceedings on 7 December 1999 reads as follows:

"A two part sanitary garment consisting of an absorbent article (1) and a waist belt (13, 16, 24) separate from said article for supporting the article, fastening means consisting of coacting hook and loop fabric tape elements (10, 25) of the Velcro tape type being secured to the article and the waist belt for affixing the article directly to the waist belt, the absorbent article consisting of a diaper or an incontinence protector comprising a liquid permeable inner layer (2), a liquid impermeable outer layer (3) and enclosed therebetween an absorbent body (4), the waist belt or the article comprising several rows of hook or loop members, said rows being oriented in parallel with the

transverse direction of the article in its applied state."

Claim 1 of the first auxiliary request filed on the same date reads as follows:

"A two part sanitary garment, the first part being an absorbent article (1) consisting of a diaper or an incontinence protector having two transverse ends (6, 7) and comprising a liquid permeable inner layer (2), a liquid impermeable outer layer (3) and enclosed there between an absorbent body (4), and the second part being a waist belt (13, 16, 24) separate from said article for supporting the article, fastening means consisting of coating hook and loop fabric tape elements (10, 25) of the Velcro tape type being secured to the transverse ends (6, 7) of the article and to the waist belt for affixing the article directly to the waist belt so that the garment may be easily handled and the absorbent article easily changed on disabled persons, the waist belt or the article comprising several rows of hook or loop members, said rows being oriented in parallel with the transverse direction of the article in its applied state".

Claim 1 of the fourth auxiliary request as amended during the oral proceedings reads as follows:

"A two part sanitary garment, the first part being an absorbent article (1), consisting of a diaper or an incontinence protector having two transverse ends (6, 7) comprising a liquid permeable inner layer (2), a liquid impermeable outer layer (3) and enclosed there between an absorbent body (4), and the second part

being a waist belt (13, 16, 24) separate from said article for supporting the article, fastening means consisting of coacting hook and loop fabric tape elements (10, 25) of the Velcro tape type being disposed at either transverse ends of the article and extend the whole width of the respective ends and to the waist belt for affixing the outer layer of the article directly to the waist belt, the waist belt or the article comprising several rows of hook or loop members, said rows being oriented in parallel with the transverse direction of the article in its applied state".

Claim 1 of the fifth auxiliary request as amended during the oral proceedings reads as follows:

"A two part sanitary garment, the first part being an absorbent article (1), consisting of a diaper or an incontinence protector having two transverse ends (6, 7) and comprising a liquid permeable inner layer (2), a liquid impermeable outer layer (3) and enclosed there between an absorbent body (4), and the second part being a waist belt (13, 16, 24) separate from said article for supporting the article, fastening means consisting of coacting hook and loop fabric tape elements (10, 25) of the Velcro tape type being disposed at either transverse ends of the article and extend the whole width of the respective ends and to the upper part of the waist belt for affixing the transverse ends of the article directly to the waist belt, the waist belt or the article comprising several rows of hook or loop members, said rows being oriented in parallel with the transverse direction of the article in its applied state".

Claim 1 of the sixth auxiliary request as amended during the oral proceedings reads as follows:

"A two part sanitary garment, the first part being an absorbent article (1), consisting of a diaper or an incontinence protector having two transverse ends (6, 7) comprising a liquid permeable inner layer (2), a liquid impermeable outer layer (3) and enclosed there between an absorbent body (4), and the second part being a waist belt (13, 16, 24) of essentially even width separate from said article for supporting the article, fastening means consisting of coacting hook and loop fabric tape elements (10, 25) of the Velcro tape type being disposed at either transverse end of the article and to the waist belt for affixing the article directly to the waist belt, the waist belt or the article comprising several rows of hook or loop members, said rows being oriented in parallel with the transverse direction of the article in its applied state".

VI. The appellant argued essentially as follows:

The system of document (D2) comprised too many parts. To arrive at the invention it would have been necessary to substitute first the impermeable crotch piece and the pad with a diaper or an incontinence protector, then to take away the straps and finally to attach the fastening means at the ends of the diaper. This was not obvious because too many steps were involved.

The garment of document (D2) was the result of an evolution whose steps were documented by documents (D9) and (D10) and which consisted essentially in improving

the fastening means connecting the waist band to the straps. The final stage of this evolution was represented by document (D2) which showed fastening means of the Velcro type. The common feature of these garments was that they were designed to retain a sanitary or incontinence pad by means of a holder affixed to the straps, whereby the straps were designed to assure adaptability of the garment to the wearer because they could be variably connected to the waist band, see in particular document (D2), page 1, from line 9, and lines 75 to 83. Consequently, the straps were an essential feature of the garment according to the above cited documents. This kind of garment led away from the invention because it taught adapting the garment to the size of the wearer by means of the straps. Said evolution ended with the publication of document (D2) in 1966. After that, this kind of garment had not been improved any more but was replaced by a completely new design, that is an integral, "all in one" diaper, typically consisting of a panty-like garment open on both sides of the waist and comprising a permeable inner layer, an impermeable outer layer, an intermediate absorbent pad and attachment tabs on each side of the waist. Initially child diapers of such type were developed and afterwards incontinence diapers of larger size for adult handicapped and elderly people. These large size diapers had, however, the disadvantage that handicapped people could not easily put them on by themselves and they would not fit persons of different sizes, and that they were complicatedly structured and expensive to produce. The invention overcame these drawbacks by separating the waist belt from the absorbent article, whereby the waist belt was reusable while the soiled absorbent article could be disposed of



and a new one of suitable size could easily be put in place.

The distinguishing features of the claims according to the auxiliary requests were intended to better delimit the invention against documents (D2) and (D4).

The respondent argued as follows:

The subject-matter of claim 1 according to the main request was not inventive having regard to document D2 alone, since the only difference consisted in the structure of the absorbent article. However, also the garment disclosed in document D2 implied the presence of an absorbent article having internal and external layers and an absorbent pad, despite the fact that the article had no integrated construction. In any case, such absorbent pad did not contribute to the invention, it being of a conventional type as was acknowledged by the patent in suit, see column 2, lines 48 to 51. It was a clearly recognizable main trend in the field of sanitary garments to use an absorbent element comprising a liquid permeable inner layer, a liquid impermeable outer layer and having enclosed therebetween an absorbent pad like the claimed invention. The feature that the absorbent article could be "directly" connected to the waist belt was also an obvious one. It was evident that a person skilled in the art, facing the problem of a high degree of incontinence in adult handicapped and elderly people, would adapt the size of the absorbent article and in particular increase its length up to the waist belt. Also the appellant recognized that the evolution of the sanitary garments from the child diapers to the

incontinence diapers was characterized merely by an increase of their size. Similarly, the person skilled in the art would increase the size of the absorbent article disclosed in D2 to meet the needs of adult handicapped and elderly people and, as a necessary consequence, he would eliminate straps because the absorbent pad would reach directly the waist belt.

The additional features contained in the subsidiary requests were either known from document (D2) or common in the field.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Main request*

The Board has been convinced by the argument of the appellant that the garment according to document (D2) was the end result of a direction of development which has not been continued after 1966, when document (D2) was filed. After that, an integral garment has been developed for adult handicapped and elderly people which differed from a typical all-in-one baby diaper only by its larger size.

Starting therefore from such article as the nearest state of the art, the person skilled in the field will be aware of the disadvantages of such garment, namely that the wearer will find it difficult to handle it without help, that it does not fit persons of different sizes, and that it is complicated in structure and

expensive to produce.

Looking for a solution of these problems, the person skilled in the art will become aware of document (D2), which, even if dating back about 20 years, still belongs to the relevant prior art in the field.

Document (D2) discloses at page 1, lines 9 to 14 and lines 75 to 83, that the purpose of the garment described therein is that it can be readily changed and that it is adaptable to persons of different sizes: "since ... the straps can be variably connected to the waistband the garment can readily be arranged to fit persons of widely different sizes. Moreover, since the garment can be readily taken apart, the changing of sanitary or incontinence pads on bed-ridden patients or by physically handicapped is greatly facilitated".

The person skilled in the field will recognize that these objects are attained in document (D2) by the presence of the waist band to which the absorbent article is attached, and not necessarily by the presence of the straps. He will therefore modify the usual large-size diaper of the nearest prior art by eliminating the usual attachment tabs on both sides of the waist and introducing a waist belt according to document (D2) instead, to which the absorbent article will be attached, without any inventive skill being involved therein. A waist belt is in fact the obvious first choice for holding over-size garments in place on the body around the waist.

Accordingly the subject-matter of claim 1 of the main request does not involve an inventive step.

3. *The auxiliary requests*

The first auxiliary request differs from the main request essentially in that the absorbent article has two transverse ends to which the fastening means are secured and by the functional feature: "so that the garment may be easily handled and the absorbent article easily changed on disabled persons".

These features derive necessarily from the analysis in point 2 and they do not add anything inventive to the claim.

The fourth auxiliary request has essentially the additional features that the fastening means are disposed at either transverse ends of the liquid impermeable outer layer of the article and extend the whole width of the respective ends for affixing the outer layer directly to the waist belt.

These features represent the more obvious choice for the configuration and positioning of the fastening means.

The fifth auxiliary request has essentially the additional feature that the fastening means are disposed at the upper part of the waist belt. The sixth auxiliary request has essentially the additional feature that the waist belt has essentially even width.

Such features are essentially known from document (D2).

Accordingly also the subject-matter of the auxiliary requests does not involve an inventive step.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

W. D. Weiß