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D E C I S I O N
of 23 October 2000

Case Number: T 0094/97 - 3.2.2

Application Number: 92921163.9

Publication Number: 0606358

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:

Absorbent hygienic article having flaps and of differential extensibility

Applicant:

THE PROCTER & GAMBLE COMPANY

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty (yes)"

"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0094/97 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 23 October 2000

Appellant:

THE PROCTER & GAMBLE COMPANY
One Procter & Gamble Plaza
Cincinnati
Ohio 45202 (US)

Representative:

Hirsch, Uwe Thomas
Procter & Gamble European Service GmbH
Sulzbacher Strasse 40-50
D-65824 Schwalbach am Taunus (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 5 June 1996
refusing European patent application
No. 92 921 163.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. D. Weiß
Members: D. Valle
J. C. M. De Preter

Summary of Facts and Submissions

I. On 24 December 1996 the appellant (applicant) filed an appeal against the decision of the examining division of 5 June 1996 to refuse the application and filed the statement of the grounds on the same day. He further requested the re-establishment of the right to file the appeal. The fee for appeal has been paid on 27 December 1996.

II. With the interlocutory decision of 13 August 1998, the Board allowed the request for re-establishment into the time limit to file an appeal and decided that the appeal was deemed to be filed.

III. The application was refused for lack of novelty having regard to the document:

D1: EP-A-0 335 527.

The following further documents have been cited in the search report:

D2: EP-A-0 426 235

D3: WO-A-9 103 999

D4: EP-A-0 405 403

D5: EP-A-0 331 018

IV. Following three communications of the Board (on 3 September 1999, on 3 November 1999 and on 7 June 2000, respectively), the appellant filed the final request on 4 August 2000 as follows:

The applicant requests to remit the application to the first instance with the order to grant a patent with the following documents:

Claims: claim 1 as filed on 4 August 2000 with letter of 2 August 2000,
claims 2 to 5 as filed on 23 May 2000 with letter of the same date,

Description: pages 1, 5 as filed on 4 August 2000 with letter of 2 August 2000,
pages 2 to 4 and 7 to 33 as filed with letter of 23 May 2000,

Drawings: sheets 1/5 to 5/5 as filed with letter of 23 May 2000.

V. Claim 1 as filed on 4 August 2000 reads as follows:

"An absorbent article (20) for wearing in an undergarment (11), said absorbent article (20) having a principal longitudinal centerline (L) and a transverse centerline (T), said absorbent article (20) comprising:
- a main body portion (22) having two spaced apart longitudinal side edges (22a) and two spaced apart transverse end edges (22b), said main body portion comprising a liquid pervious top sheet (40), a liquid impervious back sheet (42) joined to said topsheet (40) and an absorbent core (44) positioned between said topsheet (40) and said backsheet (42);
- a pair of flaps (24) for folding around and securing said absorbent article (20) to said undergarment (11), said flaps (24) being associated with said main body portion (22) at a juncture (30), with one flap (24) extending laterally outward from each longitudinal side edge (22a) of said main body portion (22), said flaps (24) having a flap transverse centerline (T₁) that

intersects the principal longitudinal centerline (L) of the absorbent article (20), said absorbent article comprising a stress relief means in said flaps (24),
- said absorbent article (20) being characterized in that at least a portion of one said flaps (24) comprises a zone (50) of differential extensibility which provides said stress relief means,
- said zone (50) of differential extensibility is capable of greater extension outward in a generally transverse direction than other portions of said absorbent article (20)
- said zone (50) of differential extensibility is made of pre-corrugated or ring rolled portions of said absorbent article (20)".

VI. The appellant argued essentially as follows:

The application was now limited to embodiments similar to those shown in figures 2 and 2a comprising pre-corrugated and ring rolled zones (50). Figure 1 was not an embodiment within the claim. The application complied with Article 84 EPC. The meaning of the words: "zone of differential extensibility" had been narrowed to require pre-corrugation. That meant that a first zone of the flap of a sanitary napkin was provided with an extensibility which allowed two points to be distanced in a different quantitative way than two points in a neighboring zone not having the same kind of extensibility. In other words the intent was not to provide the complete side flap with pre-corrugations but only to provide portions of the side flap with pre-corrugations such that the corrugated zone had different stretching characteristics than the not corrugated zone. Regarding the inventive step, the provision of stress relief zones which are pre-corrugated was not made obvious by the combination of the document D1 with the document D2.

Reasons for the Decision

1. The appeal is admissible.
2. *Formal matters*

The application is not objectionable on the basis of Articles 84 and 123 EPC.

3. *Novelty and inventive step*

Document D1 represents the nearest prior art and discloses the preamble of claim 1, namely an absorbent article for wearing in an undergarment, said absorbent article having a principal longitudinal centerline (400) and a transverse centerline (300), said absorbent article comprising:

- a main body portion having two spaced apart longitudinal side edges and two spaced apart transverse end edges, said main body portion comprising a liquid pervious top sheet, a liquid impervious back sheet joined to said topsheet and an absorbent core positioned between said topsheet and said backsheet;

- a pair of flaps (224, 224') for folding around and securing said absorbent article to said undergarment, said flaps being associated with said main body portion at a juncture (226), with one flap extending laterally outward from each longitudinal side edge of said main body portion, said flaps having a flap transverse centerline that intersects the principal longitudinal centerline of the absorbent article, said absorbent article comprising a stress relief means (250) in said flaps.

Document D1 suggests to use notches (252) or slits

(254), see figure 5 and description, column 11, lines 9 to 21 as stress relief means. "Notch" in the meaning of the above document refers to a space, indentation or hollow along the edge of the material; "slits" have the meaning of narrow cuts in the material.

The subject-matter of claim 1 distinguishes from the teaching of the above cited document by its characterizing part, that is in that:

- at least a portion of one said flaps (24) comprises a zone (50) of differential extensibility which provides said stress relief means,
- said zone (50) of differential extensibility is capable of greater extension outward in a generally transverse direction than other portions of said absorbent article (20),
- said zone (50) of differential extensibility is made of pre-corrugated or ring rolled portions of said absorbent article.

The distinguishing features solve the problem of improving the system for relieving the stress which develops at the border of the flaps when they are folded around a panty crotch, see page 4 first paragraph, page 10, third paragraph of the description.

The problem of relieving said stress is addressed also by the document D1, see column 2, from line 24. However the solution of providing zones of differential extensibility in the flaps as provided by the characterizing part of claim 1 is not hinted at by document D1. These features, when compared to the

device disclosed in document D1, have the effect that the panty can be better kept in place and that the rands of the flaps may not interfere with the skin thus avoiding discomfort.

Document D2, column 2, from line 40, also addresses the problem of the invention, see description, column 2, from line 44. However, it relies on separate elastic elements to be attached to the material of the garment to realize said zones of differential extensibility. The feature of claim 1 to make such zones by pre-corrugating or ring-rolling portions of the article is not disclosed by this document. The combination of the teaching of documents D1 and D2 gives no hints which would lead the person skilled in the art to use instead of the additional elastic members of document D2 the particular treatment of the material of the flaps suggested by the invention (pre-corrugation or ring-rolling). The invention represents also an improvement over the solution suggested by document D2 because the production of the article by the invention is more economical and more simple.

The further documents of the available prior art do not contain any hints which can lead in an obvious way to the claimed invention.

Accordingly claim 1 has to be considered novel and inventive. Dependent claim 2 to 5 are also allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside,
2. The case is remitted to the first instance with the order to grant a patent with the following version:

Claims: claim 1 as filed with letter of 2 August 2000,
claims 2 to 5 as filed with letter of 23 May 2000,

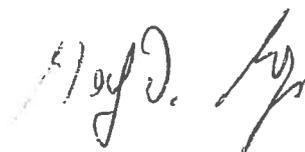
Description: pages 1, 5 as filed with letter of 2 August 2000,
pages 2 to 4 and 7 to 33 as filed with letter of 23 May 2000,

Drawings: sheets 1/5 to 5/5 as filed with letter of 23 May 2000.

The Registrar:


V. Commare

The Chairman:


W. D. Weiß

 18/10/2000
2497.D

