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D E C I S I O N
of 14 February 2002

Case Number: T 0193/99 - 3.2.6

Application Number: 90124467.3

Publication Number: 0433951

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:
Conformable absorbent article

Patentee:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:
(I) SCA MOLNLYCKE AB
(II) The Procter & Gamble Company

Headword:
-

Relevant legal provisions:
EPC Art. 83, 84, 54(2), 56

Keyword:
"Disclosure - sufficiency (yes)"
"Claims - clarity (yes)"
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
T 0292/85, T 0067/88, T 0897/92, T 0606/89, T 0574/88

Catchword:
-



Case Number: T 0193/99 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 14 February 2002

Appellant I: SCA MOLNLYCKE AB
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted
28 December 1998 concerning maintenance of
European patent No. 0 433 951 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Pricolo
M. Tardo-Dino

Summary of Facts and Submissions

- I. The appellants I and II (opponents I and II) each lodged an appeal, received at the EPO respectively on 18 and 23 February 1999, against the interlocutory decision of the Opposition Division dispatched on 28 December 1998 which maintained the European patent No. 0 443 951 in amended form. The appeal fees were both paid on 18 and 23 February 1999 and the statements setting out the grounds of appeal were received at the EPO on 4 May 1999 and 27 April 1999, respectively.
- II. The patent as a whole was opposed by the appellants under Article 100(a) on the grounds of lack of novelty and of inventive step, under Article 100(b) on the grounds that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, and under Article 100(c) on the grounds that the subject-matter of the patent extended beyond the content of the application as originally filed.

In its decision the Opposition Division considered that, taking into consideration the amendments made by the patentee at the oral proceedings held on 16 December 1998, the patent and the invention to which it related met the requirements of the EPC.

Claim 1 filed during the oral proceedings reads as follows:

"A disposable absorbent article (10), comprising a liquid permeable topsheet (26), having a topsheet periphery (40) with a topsheet peripheral measurement, a liquid impermeable backsheet (30) having a backsheet

periphery (42) with a backsheet peripheral measurement which is greater than said topsheet peripheral measurement and an absorbent structure (14) between said topsheet and said backsheet, said topsheet periphery (40) being joined to said backsheet periphery (42) to form a waste-containment pocket (56) there between, characterised in that said liquid permeable topsheet (26) being adapted to substantially fully contact the body of the wearer said topsheet (26) further including a single opening (38) adapted for receiving feces therethrough and said absorbent structure having a crotch width between 5.08 and 7.62 cm (2 and 3 inches)."

III. From the documents considered by the Opposition Division, the following documents played a role in the appeal proceedings:

D1: US-A-4 662 877;

D2: EP-A-0 359 410;

D3: EP-A-0 357 298;

D4: EP-A-0 241 041;

D6: US-A-3 860 003;

D7: EP-A-0 222 585;

D8: WO-A-89/11843.

IV. In an annex to the summons for oral proceedings pursuant to Article 11(2) Rules of Procedure of the Boards of Appeal the Board expressed its preliminary

opinion that the invention appeared to be sufficiently disclosed and that claim 1 appeared to meet the requirements of Article 84 EPC. Concerning the objection of lack of novelty, the Board gave reasons why it could not follow Appellant I's conclusions in this respect. Inventive step would need further discussion during the oral proceedings either starting from D1 or D8 as the closest prior art.

V. Oral proceedings took place on 14 February 2002.

The appellants requested that the decision under appeal be set aside and that the patent be revoked. During the oral proceedings, the appellants declared that the opinion of the Board in respect of novelty as set out in the annex to the summons for oral proceedings was not contested.

The respondent (patentee) requested that the appeal be dismissed and the patent be maintained in amended form as upheld by the Opposition Division.

VI. The arguments of appellant I can be summarized as follows:

Since the requirement of claim 1 that the topsheet was adapted to substantially fully contact the body of the wearer was dependent on factors as to the use of the article which were beyond the manufacturer's knowledge and control, it was not possible to manufacture an article in accordance with the definition of claim 1.

Moreover, although the patent in suit included several definitions of what was meant by the feature "substantially fully contacts", it failed to disclose

how these definitions could be met in practice. Therefore, unless the expression "adapted to substantially fully contact the body of the wearer" was deprived of any particular technical meaning and was considered to apply generally to prior art topsheets as well, the invention was insufficiently disclosed.

Claim 1 required the backsheet peripheral measurement to be greater than the topsheet's peripheral measurement. Claim 1 also required the topsheet and the backsheet to be joined along their peripheries, in which case their peripheral measurements could only be equal, not greater. This contradiction was a further reason to consider the invention to be insufficiently disclosed.

Furthermore, the expression "single opening adapted to receive feces therethrough" did not define any clear limitation for the opening. Indeed, feces varied tremendously in their consistency and therefore it was not possible to determine just what adaptation of a hole was necessary to ensure that feces were received therethrough. Consequently claim 1 did not meet the requirements of Article 84 EPC.

Moreover, the subject-matter of claim 1 did not involve an inventive step. Document D6, which already solved the problem underlying the patent in suit of avoiding excess material bunching between the legs, could be regarded as the closest prior art. Although this closest prior art did not disclose a topsheet with a single opening adapted for receiving feces therethrough, the skilled person faced with the objective problem of reducing the contact between the skin and body wastes would find either in document D8

or in document D1 the obvious solution thereto consisting in the provision of a topsheet with a single opening, thereby arriving in an obvious manner at the subject-matter of claim 1.

The skilled person would arrive at the subject-matter of claim 1 also starting from document D1 or from document D8. Indeed, the skilled person faced with the problem of determining a suitable core width would be motivated to consider the teaching of D6 since this document related to the aspect of conformity. D6 informed the skilled person that if the crotch width was 2 to 3 inches bunching of the absorbent core in the crotch region was prevented. Hence, the skilled person would modify the diaper of D1 or D8 to have a crotch width of 2 to 3 inches in order to solve the above mentioned problem.

VII. Appellant II supported Appellant I's conclusions.

In respect of lack of clarity of claim 1, appellant II additionally pointed out that in case of feces having water-like consistency even minute openings, such as those shown in document D4, would be "adapted to receive feces therethrough".

In respect of inventive step, appellant II essentially argued that the subject-matter of claim 1 was obvious either starting from document D1 or from document D8 in view of the teaching of document D6.

Starting from document D1, the features distinguishing the subject-matter of claim 1 from the closest prior art were that the topsheet was liquid permeable and that the absorbent structure had a crotch width between

5.08 and 7.62 cm. However, the skilled person would immediately recognize that the provision of a conventional liquid permeable sheet, rather than a liquid impermeable one, was advantageous because it allowed urine always to reach the absorbent structure thereby avoiding leakage from the absorbent article of D1 in case some urine did not hit the opening in the topsheet. Furthermore, the skilled person faced with the problem of improving the fit of the absorbent article would turn to document D6, which suggested solving this problem by narrowing the crotch width to be preferably 2 to 3 inches, and accordingly would apply this teaching to the absorbent article of D1.

Starting from document D8, the only distinguishing feature was to be seen in the provision of a crotch width between 5.08 and 7.62 cm. The provision of this feature in the absorbent article of document D8 to improve its fit was obvious in the light of the teaching of D6, as explained above in connection with D1. The obviousness of the provision of the distinguishing feature was even clearer when considering the embodiment of Figures 19 and 20 of D8 showing an absorbent structure that narrowed in the crotch region. Providing a crotch width between 5.08 and 7.62 cm in this latter embodiment was a purely arbitrary, and thus not inventive, selection.

VII. The respondent essentially argued as follows:

By "being adapted to substantially fully contact the body of the wearer" claim 1 defined, in accordance with the description of the patent in suit, that the topsheet should be such that in use a major portion thereof contacted the wearer's body. There were no

difficulties for a skilled person to provide such a topsheet, as conventional topsheets, such as that of D8, were generally adapted to substantially fully contact the body of the wearer. Furthermore, the description of the patent in suit explained how to join along their peripheries a backsheet and a topsheet wherein the backsheet's peripheral measurement was greater than that of the topsheet. Therefore, the invention was sufficiently disclosed.

Claim 1 met the requirements of Article 84 EPC since the skilled person would immediately recognize that the expression "single opening adapted to receive feces therethrough" indicated an opening which was sufficiently large and properly positioned to receive body wastes exiting the anus.

The subject-matter of claim 1 also involved an inventive step.

The main object of document D6 was to provide side flaps having elastic members outwardly spaced from the absorbent body. The absorbent article of D6 was neither provided with a topsheet having an opening nor with a waste-containment pocket. A crotch width of 2 to 3 inches was only disclosed in connection with one particular embodiment and there was no reason for a skilled person to specially select this particular embodiment as a starting point for further development. The fact that D6, dating back to 1975, was much older than D1, and the fact that nobody thought of combining these two documents before the relevant date of the patent in suit, were indications of the presence of inventive step. Moreover, the differences in the structure of the absorbent articles of D6 and D1, in

particular the presence in D1 of a facing sheet highly resistant to penetration of liquid and of a topsheet, referred to as cover sheet in D1 and consisting of a rectangular piece not joined to the backsheet along the periphery of the latter, were such that the skilled person would not have combined the teachings of D6 and D1.

Furthermore, there was no incentive whatsoever to combine the teaching of D1 or D8 with the teaching of D6 to provide a crotch width of 2 to 3 inches. Indeed D1 explicitly disclosed an absorbent structure having a crotch width larger than 12 cm and thus led completely away from a crotch width in accordance with the patent in suit. D8 specifically disclosed, in the embodiment of Figures 17 and 18, the provision of an absorbent insert that was wider in the crotch zone, and thus taught away from the provision of an absorbent structure being narrower in the crotch region than in D6. Moreover, in the embodiment of Figures 19 and 20 of D8, the topsheet was integrally attached to the absorbent structure, whilst in D6 the topsheet was joined to the backsheet, and therefore the latter embodiment of D8 could not be combined with D6.

Reasons for the Decision

1. The appeals of the opponents are admissible.
2. *Amendments (Article 123 EPC)*

Claim 1 includes all the features of original claims 1, 9 and 10. The amendment of the feature of original claim 1, that the article comprises "an opening adapted

for receiving body wastes therethrough", to read:
"single opening adapted for receiving feces
therethrough", finds support in the original
application in Figures 5 and 6; in page 6,
2nd paragraph; and in page 12, first full paragraph.

The protection conferred by the patent has been
restricted by the amendments since claim 1 is limited
over claim 1 as granted to the presence of a "single"
opening.

Dependent claims 2 to 23 correspond to original
claims 2-8, 11-13, 15-20, 25, 26, 28-30, 34.

The description of the patent in suit is adapted to be
consistent with the claims as amended.

Therefore, no objections under Article 123(2) and (3)
EPC arise.

3. *Clarity and support by the description (Article 84 EPC)*

3.1 Claim 1 defines in a sufficiently clear manner the
matter for which protection is sought. Moreover, it is
adequately supported by the description.

3.2 The expression "single opening adapted to receive feces
therethrough", objected to by the appellants under
Article 84 EPC, is held to be sufficiently clear and
implies limitations of both size and position of the
opening to receive feces.

The appellants argued that this expression did not
define any clear limitation for the opening, in
particular its size, due to the variable nature of

feces.

In the Board's view, the skilled reader dealing with the technical meaning of "single opening adapted to receive feces therethrough" would consider that the opening should be such as to allow most kinds of feces therethrough, and therefore would come to the conclusion that the opening should be large enough to receive not only liquid but also solid material. Furthermore, it is considered to be apparent that, in particular when the opening is chosen to be relatively small, it should be positioned in the rear part of the napkin rather than in the front part.

4. *Sufficiency of disclosure (Article 83 EPC)*

4.1 According to the established case law, an invention can be held to be sufficiently disclosed if at least one way is clearly indicated enabling the skilled person to carry out the invention (see e.g. T 292/85, OJ EPO 1989, 275).

4.2 The patent contains several examples of topsheets, liquid impermeable backsheets, and absorbent structures for use in the absorbent article according to claim 1 (see col. 6, lines 53-55; col. 9, last paragraph; col. 12, line 15 to col. 13, line 41), and of manners for joining the topsheet to the backsheet to form a waste-containment pocket (col. 7, lines 3-37). Since the topsheet is made of a flexible and compliant material, it may, in use, substantially fully contact the body of the wearer.

4.3 The appellants argued that it was not possible to manufacture an article meeting the requirement of

claim 1 that the topsheet was adapted to substantially fully contact the body of the wearer, since this requirement was dependent on factors as to the use of the article which were beyond the manufacturer's knowledge and control.

In the Board's view, the skilled reader would consider that the expression "topsheet being adapted to substantially fully contact the body of the wearer" implies that the topsheet should be such that in use a major portion thereof contacts the wearer's body. This interpretation corresponds indeed to the broadest literal meaning of the above mentioned expression and is moreover supported by the description of the patent in suit (see col. 8, lines 20-26).

In this respect the Board cannot follow the Opposition Division in its view (see point 2 of the decision under appeal) that it "becomes clear from column 8, lines 29-33" of the patent in suit that the above mentioned expression means that about 70% to slightly less than 100% of the topsheet is in contact with the baby's skin, because this range, which falls within the wider range of 50% to 100% corresponding to a major portion of the topsheet, is given by way of example only (see col. 8, line 31).

The provision of an absorbent article with a topsheet of which a major portion contacts the wearer's body does not present any difficulties for a skilled person. Indeed, such an absorbent article can be obtained simply by providing a sufficiently flexible and compliant topsheet of the kind generally known in the art and exemplified on col. 9, last paragraph of the patent in suit.

- 4.4 The appellants questioned how it was possible that the topsheet and the backsheet were joined along their peripheries and at the same time the backsheet peripheral measurement was greater than the topsheet's peripheral measurement.

Since the disposable absorbent article is intended to form a three-dimensional structure comprising a waste-containment pocket, the skilled person would immediately note that the backsheet and the topsheet are not to be seen as flat and rigid elements which must necessarily have the same peripheral measurement in order to be joined along their peripheries, but as flexible and compliant elements which can be deformed and thus easily joined along their peripheries, even if they actually have different peripheral measurements. For instance, the backsheet can be drawn inwardly and connected to the topsheet, as disclosed in col. 7, lines 2-10 of the patent in suit or the topsheet can be made of stretchable material as disclosed in col. 7, lines 33-37. In both cases the backsheet will form pleats along the join.

- 4.5 From the above it follows that at least one way enabling the skilled person to carry out the invention is clearly indicated, and therefore the requirements of Article 83 EPC are met.

5. *Novelty*

- 5.1 The Board has already treated this question in its annex to the summons to oral proceedings, and the appellants have declared that they did not contest the opinion of the Board in this respect.

5.2 Documents D2 and D3, which form part of the state of the art according to Article 54(3) EPC, do not disclose the feature of claim 1 that the absorbent structure has a crotch width between 5.08 and 7.62 cm.

Although both D2 and D3 "incorporate by reference" document D6 (see D2, col. 3, lines 39-42; see D3, col. 3, lines 22-25), there is no indication either in D2 or in D3 that the disclosure of document D6 to provide a crotch width of 2 to 3 inches (5.08 to 7.62 cm) is incorporated by reference into document D2 and D3 so as to form part of their teaching in this respect (see e.g. T 67/88, not published).

5.3 The other available documents do not disclose a disposable absorbent article having a topsheet including a single opening adapted for receiving feces and an absorbent structure having a crotch width between 5.08 and 7.62 cm.

5.4 Consequently, the subject-matter of claim 1 is found to be novel.

6. *Inventive step*

6.1 The technical problem underlying the patent in suit consists in providing improved performance in managing and containing body wastes between the body orifices and topsheet surfaces (see the patent, col. 1, lines 27-41 and col. 1, line 59 - col. 2, line 2).

6.2 In the Board's view, document D8 represents the closest prior art because it discloses, in the embodiment of Figures 17 and 18, a disposable absorbent article which corresponds to the same use of and requires the minimum

of structural and functional modifications to arrive at the claimed subject-matter (see e.g. T 897/92, not published).

Using the wording of claim 1, D8 discloses (see Fig. 18) a disposable absorbent article comprising: a liquid permeable topsheet (74) having a topsheet periphery, a liquid impermeable backsheet (30; see claim 1) having a backsheet periphery with a backsheet peripheral measurement which is greater than said topsheet peripheral measurement (see page 13, lines 11-14), and an absorbent structure (38) between said topsheet and said backsheet, said topsheet periphery being joined to said backsheet periphery to form a waste-containment pocket (page 13, lines 11-14 and 17, 18) therebetween, said liquid permeable topsheet being adapted to substantially fully contact the body of the wearer, said topsheet further including a single opening (76) adapted for receiving body wastes therethrough (page 13, lines 16-20). The topsheet (liner 74) must be liquid permeable, since the aperture (76) is only meant for receiving faecal material.

D8 does not disclose that the absorbent structure has a crotch width between 5.08 and 7.62 cm (2 and 3 inches).

- 6.2.1 The distinguishing feature results in an improved fit between the wearer's legs and the topsheet and thus in improved body contact with the topsheet. With improved body contact with the topsheet, the opening in the topsheet is reliably positioned relative to the anus and urine is prevented from flowing over the topsheet surface (see col. 4, lines 5-19 of the patent in suit). Hence, the claimed article effectively solves the problem of providing improved performance in managing

and containing body wastes between the body orifices and topsheet surfaces.

- 6.2.2 Document D6 discloses (see Fig. 1) a similar disposable absorbent article comprising: a liquid permeable topsheet (23), a liquid impermeable backsheet (22), an absorbent structure (24) between said topsheet and said backsheet, and flexible side flaps (25) extending outwardly from and along each lateral edge of the absorbent body.

The main objective of document D6 is to position the elasticized portion of each side flap (25) (see Fig. 1) sufficiently remote from the absorbent body (24) in the crotch area to permit the elasticized contractable line through the side flap to maintain a good fit about the leg during normal in-use leg/diaper movements, i.e. to provide continued non-slipping contact of the side flap with the wearer's body (see claim 1; see col. 2, lines 23-28 and col. 3, lines 49-66).

D6 discloses, in a preferred embodiment, to provide an hourglass shaped absorbent structure having a crotch width between 1 inch and 6 inches at its narrowest portion, preferably 2 and 3 inches (5.08 and 7.62 cm; see col. 5, lines 44-48). It is readily apparent to a skilled person that these features allow achievement of the main objective mentioned in D6 since they result in the elastic members (26) being sufficiently remote from the absorbent body as the latter is narrowed in the crotch region. However, there is no suggestion to be found in D6 that it is the particular selection of the preferred range of 2 to 3 inches for the crotch that specifically contributes to a better fit. D6 discloses that a better fit is obtained by the provision of a

"modified" hourglass shape in which the length of the diaper edges is longer than the length of the longitudinal centre of the diaper (col. 6, lines 34-42). Hence, the teaching of document D6 is that it is the shape itself, and not the particular dimensions thereof, that contributes to a better fit.

Moreover, D6 is not concerned with the problem of containing feces but is exclusively related to devices for absorbing and retaining liquid from the human body (see e.g. col. 1, lines 16-18).

Furthermore, the Opposition Division pointed out (page 5, 2nd paragraph, of the decision under appeal), that the prior art (e.g. D2 and D3) discloses generally broader crotch widths (than 2 to 3 inches). This statement was not contested by the parties and the Board sees no reason to put this statement in doubt.

In this respect the Board draws attention to the fact that D6 has a publication date of 14 January 1975, whereas D8 dates from 14 December 1989. Without a clear relation to the underlying problem to be solved or hint in the direction of possible advantages to be gained when applying teachings of D6 to D8, it is considered against the normal development in this very active field of technology that the skilled person relies on such relatively old prior art, in particular when it does not concern the special type of napkin concerned, i.e. a napkin having an arrangement for isolating fecal matter from the wearer.

Therefore the skilled person starting from the closest prior art and knowing that usually crotch widths are generally broader than 3 inches, would not select the

particular range of 2 to 3 inches disclosed by document D6 because there is no apparent reason for making such a selection. In an attempt to improve the fit of the closest prior art absorbent article, the skilled person could be led by the teaching of document D6 to provide the generally known hourglass shaped absorbent structure (38, see Fig. 18 of D8), not however, to the provision of an uncommonly narrow crotch width of 2 to 3 inches to arrive at a new combination of features with a new functionality.

6.2.3 The embodiment of Figures 19 and 20 of document D8 represent more remote prior art than the embodiment of Figures 17 and 18, since the topsheet (liner 74a) is here integrally attached to the absorbent structure (padding 38a; see page 15, lines 6-9), and therefore the topsheet periphery, although joined to the backsheet, is not joined to the backsheet *periphery* (see Fig. 19) as required by claim 1 of the patent in suit.

In the embodiment of Figures 19 and 20 of D8 the absorbent structure is folded to narrow in the crotch region. Although a generally hourglass shaped absorbent structure is present there, the skilled person would see no reason to provide an uncommonly narrow crotch width of 2 to 3 inches according to the particular embodiment of D6.

Moreover, the provision of a crotch width of 2 to 3 inches in the latter embodiment of D8 cannot be regarded as a mere arbitrary and thus non-inventive selection, as argued by appellant II, since the selection of a crotch width narrower than the generally used crotch widths contributes to the achievement of an

improved management and containment of body wastes including feces, which is another aspect not disclosed or hinted at in D6.

6.2.4 Document D7 discloses an incontinent pad having a crotch width of 3 inches (page 25, first paragraph). Since it is an incontinent pad (see also D7, page 1, first paragraph), this known absorbent article is not designed for receiving feces. The skilled person would therefore see no reason to modify the article in D8, designed to receive both urine and feces, to include a feature disclosed in connection with an article designed for receiving urine only.

6.2.5 None of the other available documents discloses or suggests the claimed range for the crotch width of the absorbent structure.

Therefore, starting from the closest prior art D8, the subject-matter of claim 1 is found to involve an inventive step.

6.3 The appellants further argued that the subject-matter of claim 1 was obvious when starting from the prior art disclosed in document D1 in view of the teaching of document D6.

6.3.1 Compared to the claimed subject-matter, document D1 discloses a disposable absorbent article comprising: a topsheet (13), having a topsheet periphery with a topsheet peripheral measurement, a liquid impermeable backsheet (10) having a backsheet periphery with a backsheet peripheral measurement which is greater than said topsheet peripheral measurement, and an absorbent structure (11) between said topsheet and said

backsheet, said topsheet periphery being joined to said backsheet periphery to form a waste-containment pocket (see Fig. 4) therebetween, said topsheet (26) being adapted to substantially fully contact the body of the wearer, said topsheet further including a single opening (13C) adapted for receiving body wastes therethrough (col. 3, lines 58-64).

In this respect, the Board cannot share the respondent's view that the cover sheet (12) of D1, rather than the facing sheet (13), corresponds to the topsheet referred to in claim 1 of the patent in suit. Indeed not only the facing sheet (13) overlies the cover sheet (12), but it also has the same function of the topsheet of claim 1 to substantially fully contact the body of the wearer.

According to D1, the topsheet 13 is not liquid permeable (col. 1, line 52, col. 2, line 3), and the crotch width is greater than 7.62 cm since the absorbent structure (11) is wider (Fig. 2) than the aperture (13C) which has a width of at least 12 cm (cf. col. 2, lines 59-62).

6.3.2 In an attempt to improve the fit of the absorbent article known from D1, the skilled person could be led by the teaching of document D6 to provide an hourglass shaped absorbent structure, not however, to the provision of an uncommonly narrow crotch width of 2 to 3 inches because of the specific teaching of D1 to provide a large width of the opening in this area.

Furthermore, there is no reason for the skilled person to replace the liquid impermeable sheet (13) of D1 with a liquid permeable one. Indeed this would impair the

achievement of the main objective of D1 consisting in containing and retaining liquid discharges (see col. 1, lines 20-31), for which the provision of a liquid impermeable sheet is essential (see claim 1). Thus, the skilled person noting that urine may leak if it does not hit the opening, would rather look for measures other than the provision of a liquid permeable topsheet in order to avoid this, such as e.g. the provision of a larger opening.

6.4 It was also argued by appellant I that the subject-matter of claim 1 was obvious starting from D6 as the closest prior art in view of the teaching of D8 or D1.

6.4.1 It is the established case law of the Boards of Appeal that the closest prior art for the purpose of objectively assessing inventive step is generally that which corresponds to a similar use requiring the minimum of structural and functional modifications (see T 897/92 *supra*; also e.g. T 606/89, T 574/88, not published).

Starting from document D6, the structural modifications required to arrive at the claimed subject-matter are: the provision of a topsheet having a single opening adapted for receiving feces therethrough, and the provision of a backsheet having a peripheral measurement which is greater than the topsheet peripheral measurement. Although the absorbent article of D6 also retains feces in use, it does not contain feces within the structure of the article, as does the claimed absorbent article due to the presence of an opening in the topsheet.

The absorbent article of D6 thus requires more

structural modifications than the prior art of D8 (see point 6.2 above) to arrive at the claimed subject-matter. Furthermore, it is less similar in use than the prior art of D8, which has a single opening in the topsheet, to the claimed subject-matter since it does not contain feces within the structure of the article.

It follows that D6 cannot qualify as the closest prior art. The subject-matter of claim 1 having been found to be inventive when starting from the closest prior art D8, the same conclusion will necessarily be reached when starting from the more distant prior art D6.

6.4.2 Moreover, assuming that D6 is taken as a starting point for further development, there is no reason for the skilled person to consider carrying out modifications of the absorbent article in D6 in order to solve the objective problem of reducing the contact between the skin and body wastes. Indeed D6 is not concerned with the problem of containing feces but is exclusively related to devices for absorbing and retaining liquid from the human body (see e.g. col. 1, lines 16-18). Although suitable for retaining feces as well, the absorbent article of D6 is of the kind that should be removed and disposed of as soon as possible after the expulsion of feces, which would otherwise remain fully in contact with the wearer's skin.

Furthermore, the skilled person faced with the above mentioned problem would turn to those documents which already solve it, such as D8, and would adopt integrally the solution described therein to that problem, keeping only those features of D6 which are described as essential, namely a sufficient distance between the elasticized portion of each side flap and

the absorbent body in the crotch area (see claim 1 of D6), not however the features, such as the crotch width of 2 to 3 inches, which are not essential (a sufficient distance between the elasticized portion of each side flap and the absorbent body can also be obtained with larger crotch widths) and which have no specific contribution to a better fit (see point 6.2.2 above).

6.5 Therefore, the subject-matter of claim 1, and of dependent claims 2 to 23 that define preferred embodiments of the absorbent article of claim 1, is found to involve an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau