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D E C I S I O N
of 11 February 2000

Case Number: T 0857/99 - 3.2.6

Application Number: 94202252.6

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IPC: A61F 13/15, A61F 13/56

Language of the proceedings: EN

Title of invention:

Absorbent article having undergarment side wrapping elements

Applicant:

THE PROCTER & GAMBLE COMPANY

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step - no"

Decisions cited:

T 0021/81, T 0508/91, T 0623/91

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0857/99 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 11 February 2000

Appellant: THE PROCTER & GAMBLE COMPANY
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Representative: Hirsch, Uwe Thomas
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 April 1999
refusing European patent application
No. 94 202 252.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Alting van Geusau

Members: T. Kriner
M. J. Vogel

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 24 June 1999, against the decision of the Examining Division, dispatched on 22 April 1999, refusing European patent application No. 94 202 252.6. The fee for the appeal was paid simultaneously. The statement of grounds was received on 25 August 1999.

II. The Examining Division held that the application did not meet the requirements of Article 52(1) EPC in conjunction with Article 54 EPC, in particular because the claimed subject-matter lacked novelty with regard to the disclosure of document:

D1: WO-A-93/06805.

III. Oral proceedings took place on 11 February 2000.

The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following claims:

Main request:

Claims 1 to 10 filed with letter dated 13 January 1999.

Auxiliary request:

Claim 1 based on the combination of claims 1 and 2 of the main request. Dependent claims 2 to 9 correspond to the dependent claims 3 to 10 of the main request.

IV. Independent claim 1 according to the main request reads as follows:

"An absorbent article (20) for wearing in a wearer's undergarment that has a crotch region with a pair of side edges, said absorbent article having a longitudinal centerline L extending parallel to a longitudinal direction, said absorbent article (20) comprising:
a main body portion (21) comprising an absorbent core, said main body portion (21) having a body-facing side (23), a garment-facing side, and a pair of longitudinal side edges (22); and
a pair of side wrapping elements (50) for folding around the side edges of the wearer's undergarment, said side wrapping elements (50) being joined to said main body portion (21) and extending laterally outward beyond the longitudinal side edges (22) of said main body portion (21); and
said side wrapping elements (50) comprise at least one zone of extensibility (56) each which are symmetrically placed in respect to said longitudinal centerline L and said zones of extensibility (56) have laterally most inward points, said laterally most inward points being those points in said zones of extensibility (56) that are located closest to said longitudinal centerline L; and said absorbent article (20) being characterised in that
said laterally most inward points have a distance to said longitudinal centerline L of at least 40 mm".

Independent claim 1 according to the auxiliary request differs from claim 1 according to the main request in that the range of "at least 40 mm" in the

characterising portion is restricted to a sub-range of "40 mm to 60 mm".

V. In support of its requests, the appellant relied essentially on the following submissions.

D1, a document which described an absorbent article as defined in the preamble of claim 1 according to the main and auxiliary request, did not disclose any range for the transversal distance of the zones of extensibility, let alone for the distance of the laterally most inward points of these zones with respect to the longitudinal centerline.

When making an effort to construe such a range from the teaching of D1, a plurality of selections was necessary to arrive at the range of the present application. For this purpose one had to assume a certain crotch width of a panty, a certain position of the folding lines in relation thereto, a certain position of the lines of juncture in relation to the folding lines, and a certain position of the extensible zones in relation of the lines of juncture.

With respect to the relation between the position of the folding lines and the lines of juncture, D1 did not provide any clear disclosure, because it only described on page 12, paragraph 3, that the folding lines were typically located along or adjacent the lines of juncture. Furthermore, since D1 on page 26, paragraph 4 taught that the position of the extendible zones were to be freely chosen along, inboard or outboard the lines of juncture and no selection of one particular possibility was justified, the panty's crotch width and

the transversal distance of the extensible zones described in D1 were fully independent of each other.

The problem to be solved by the present application was to provide an absorbent pad according to D1 which could be used for a variety of different panties, in particular for low and high leg cut panties. The solution according to the present invention was to select a minimum transversal distance of the extensible zones. Due to this selection and the typical contours of panties, the extensible zones were inboard of the panty and extended when the pad was worn with a low leg cut panty, and outside the panty and hardly extended when worn with a high leg cut panty. Therefore, in both cases it was avoided that an extensible zone in its unextended condition was inboard of the panty which would normally cause a comfort negative, such as bunching or flaring out.

D1 gave no teaching where to arrange the zones of extensibility so that the sanitary pad shown in this document was useable for both low and high leg cut panties. In particular, D1 did not suggest selecting a transversal distance of the extensible zones of more than 80 mm for high leg cut panties.

Therefore, as the arrangement of the extensible zones according to the characterising portion of claims 1 was neither known nor suggested by D1, the subject-matter claimed in the present application was not only novel but also involved an inventive step.

Reasons for the Decision

1. The appeal is admissible
2. *Amendments*

The claims in accordance with the main request differ from the originally filed claims only by reference signs which have been inserted into the claims.

Claim 1 in accordance with the auxiliary request is based on the originally filed claim 1 in which the range of "at least 40 mm" defined in the characterising part is replaced by the range "40 mm to 60 mm" to be found in the originally filed claim 2.

The dependent claims of both requests correspond with the originally filed dependent claims.

None of the amendments give rise to objections under Article 123(2) EPC.

3. *Novelty*
 - 3.1 D1 undisputedly discloses, in particular in its Figures 1 to 4 and the corresponding description an absorbent article (20) for wearing in a wearer's undergarment (11) that has a crotch region (14) with a pair of side edges (16, 16'), said absorbent article having a longitudinal centerline (L) extending parallel to a longitudinal direction, said absorbent article comprising:

a main body portion (22) comprising an absorbent core (44), said main body portion having a body-facing side (40), a garment-facing side (42), and a pair of longitudinal side edges (22a); and

a pair of side wrapping elements (24) for folding around the side edges of the wearer's undergarment (see Figure 4), said side wrapping elements being joined to said main body portion and extending laterally outward beyond the longitudinal side edges of said main body portion; and

said side wrapping elements comprise at least one zone of extensibility (50) each which are symmetrically placed in respect to said longitudinal centerline and said zones of extensibility have laterally most inward points, said laterally most inward points being those points in said zones of extensibility that are located closest to said longitudinal centerline.

Such an absorbent article corresponds with the article of the pre-characterising portion of claim 1 of the main and auxiliary request.

- 3.2 However, D1 does not explicitly disclose a range for the transversal distance of the most inward points of the extensible zones with respect to the longitudinal centerline as defined in the characterising portions claim 1 of the main- and claim 1 of the auxiliary request.

Therefore, the subject-matter of these claims and their dependent claims is novel.

4. *Inventive step*

4.1 The general object of an absorbent article or absorbent pad according to the present application as well as according to D1 is to absorb and retain discharges from the human body and to prevent body and clothing soiling when worn in a panty (see page 1, lines 23 to 25 of the description of the present application). To prevent the discharges in particular from soiling the edges of the panty, such a pad is provided with side wrapping elements or flaps (see page 2, lines 9 to 11 of the description of the present application) which may be folded down around the edges of the crotch portion of the panty as for example shown in Figure 4 of D1.

When the pad is brought into position in a panty and the flaps are folded, due to the curved shape of the side edge of the crotch portion stresses are developed in the flaps, which stresses may cause the corner regions of the flaps to bunch longitudinally inward. This effect reduces the area of the panty that the flaps are able to cover and protect against soiling (see D1, page 25, paragraph 3).

In order to eliminate, or at least reduce the stresses, the pads are provided with zones of extensibility. These zones have to be arranged in such a way that the flaps are adapted to the curvature of the panty's side edges when they are folded around the panty's crotch portion.

4.2 In the embodiments shown in Figures 1 to 4 of D1, the zones of extensibility (50) are solely arranged in the flaps (24) so that their transversal inner sides are

bound by the lines of juncture (30) where the flaps (24) are associated with the main body portion (22) of the pad (20).

When fully extended, these extensible zones (50) define a further boundary that runs from the intersection of the flap transverse centerline (T_1) and a line of juncture (30) to that point on the edge (35) of the flap where the flap intersects the edge (16) of the panty crotch. In an ideal case, this boundary should correspond to the configuration of the edges of the crotch of the wearer's panties (see D1, page 29, paragraph 3).

Consequently, in an absorbent pad as shown in Figures 1 to 4 of D1, the position of the lines of juncture (30) and inevitably the position of the laterally most inward points of the extensible zones (50) are dependent on the crotch width of the panty with which the absorbent pad is to be used. In the ideal case mentioned above, the distance between the most inward points of the extensible zones corresponds exactly to the crotch width of the panty, and in a less ideal case as shown in Figure 4 of D1, the distance between these most inward points is greater than the crotch width of the panty.

- 4.3 Commonly, panties have a crotch width of about 5.0 to about 9.0 centimeters (see D1, page 26, paragraph 4).

In the case of a panty having a crotch width of 9.0 centimeter and in the light of the preceding assessments, it is obvious for the skilled person to provide in accordance with the teaching of D1 an

absorbent pad according to Figures 1 to 4 of D1, where the laterally most inward points of the extensible zones have a distance to the longitudinal centerline of 45 mm, in order to adapt the pad in such a way to the panty that stresses in the flaps are relieved when they are folded down, and to improve the protection of the panty against soiling.

The distance of 45 mm falls within both the range of at least 40 mm according to the main request and the sub-range of 40 mm to 60 mm according to the auxiliary request.

In accordance with the case law of the Boards of Appeal, the patentability of a device referring to a range requires, that the device meets the requirements of the EPC throughout the whole range claimed (see for example T 508/91 or T 623/91).

Since in the present case, at least one value of the ranges defined in claims 1 according to the main- and auxiliary can be derived in an obvious manner from the teaching of D1, the claimed articles do not involve an inventive step with respect to at least one specific point of the claimed ranges. Therefore, these claims are not allowable.

- 4.4 The appellant's argumentation according to which a range for the distance of the laterally most inward points of the extensible zones was neither disclosed in D1 nor deducible from this document, is based on the assumption that D1 does not provide any clear information about the arrangement of the extensible zones.

This assumption is correct in so far as D1 does not explicitly disclose numerical values concerning the arrangement of the extensible zones. However, D1 gives a clear teaching where to arrange these zones with respect to the pad configuration.

The statement on page 26, paragraph 4 according to which the zones of extensibility may be located with respect to the lines of juncture either along or outboard or inboard the lines of juncture, refers to different embodiments of the invention and does not exclude a selection of a particular possibility as the appellant concludes. Figures 5 to 7 of D1 show for example an embodiment of an absorbent pad where the extensible zones are arranged along the lines of juncture, and Figures 9 to 13 an embodiment where the extensible zones are arranged inboard the lines of juncture.

In contrast to these embodiments, Figures 1 to 4 show an embodiment where the zones of extensibility are clearly arranged outside the lines of juncture. With respect to the arrangement of the pad in a panty shown in Figure 4 and the information concerning the relation between the extensible zones and the edges of a panty's crotch section on page 29, paragraph 3, D1 therefore additionally implies a position of the laterally most inward points of the extensible zones of a pad according to the embodiment of Figures 1 to 4 in dependence on the crotch width of a panty in which the absorbent pad is to be used. Since the arrangement of the extensible zones outside the lines of juncture and the location of its laterally most inward points with respect to the crotch width of a panty as described

above, refer to a single embodiment of the pad according to D1, it does not require a plurality of selections for arriving at a suggestion for the arrangement of the extensible zones as stated by the appellant.

- 4.5 The appellant's argument that D1 does not teach where to arrange the zones of extensibility so that the sanitary pad shown in this document is useable for low and high leg cut panties, is also not sufficient to support an inventive step.

According to the case law of the Boards of Appeal, a claim lacks inventive step if something falling within the terms of a claim would have been obvious to a skilled person, because the teaching of the prior art could be expected to produce an advantageous effect, regardless of the fact that an extra effect is obtained by the subject-matter of the claim (see T 21/81).

Following the same line of argumentation used above, it would have been obvious to the skilled person to arrange the extensible zones in a pad according to Figures 1 to 4 of D1 so that the distance between the laterally most inward points of these zones corresponds to the crotch width of a panty in which the pad will be used to improve the protection of the panty against soiling. For a panty having a crotch width of 9.0 centimeters he would have arranged the extensible zones so that this distance is also 9.0 centimeters, regardless whether or not the pad is intended for different kinds of panties.

Furthermore, the appellant's argument concerns the use

of a pad in connection with particular pant designs. However, the subject-matter of the present claims does not imply any further features concerning such designs.

5. The Board therefore comes to the conclusion that the subject-matter of claims 1 according to the main and auxiliary request follows in an obvious manner from the prior art disclosed in D1 and accordingly does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau