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**D E C I S I O N**  
**of 21 June 2005**

**Case Number:** T 1156/01 - 3.3.9

**Application Number:** 97112475.5

**Publication Number:** 0821044

**IPC:** C09J 7/04

**Language of the proceedings:** EN

**Title of invention:**  
Adhesive tape and its base fabric

**Applicant:**  
NIPPON PETROCHEMICALS CO., LTD., et al

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

"Clarity (no) - unclear characterization by parameters"

**Decisions cited:**

T 0412/02

**Catchword:**

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Case Number: T 1156/01 - 3.3.9

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.9  
of 21 June 2005

**Appellant:**

NIPPON PETROCHEMICALS CO., LTD.  
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Chiyoda-ku  
Tokyo 100 (JP)

**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 27 April 2001  
refusing European application No. 97112475.5  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** P. Kitzmantel  
**Members:** J. Jardon Alvarez  
M. B. Günzel

## Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division, dated 27 April 2001, refusing European patent application 97 112 475.5, published as EP-0 821 044 on 28 January 1998 (Bulletin 1998/05).

II. The decision under appeal was based on Claims 1 to 4 and 11 to 14 as filed with letter dated 24 October 2000 and Claims 5 to 10 and 15 to 19 as filed with letter dated 26 July 2000. Claim 1 read as follows:

"1. A base fabric for an adhesive tape which is composed of at least one longitudinal base material of stretched unidirectionally aligned nonwoven fabric, which nonwoven fabric is obtainable by spinning a thermoplastic resin into a long filament nonwoven fabric and stretching it longitudinally by 5 to 8 times in length, said long filaments being aligned almost in one direction, wherein the fineness of filaments of said stretched unidirectionally aligned nonwoven fabric is 1 denier or less and the strength of said nonwoven fabric as a whole is 1.5 g/denier or more."

The reasons for the refusal were that the application did not meet the requirements of the EPC because the subject-matter of claims 1 to 19 lacked clarity (Article 84 EPC).

The Examining Division furthermore contended that the subject-matter of Claims 1, 3 and 5 to 10 was not novel (Article 54 EPC) having regard to the disclosure of D1 (JP-A-59 021 766), and that the subject-matter of

Claims 2 and 11 to 19, although novel, did not involve an inventive step (Article 56 EPC).

Concerning the objection of lack of clarity, the Examining Division held that, in order to distinguish the base fabrics of the application from those according to D1, the Applicant used an unusual parameter, namely the strength of the nonwoven fabric as defined on page 13 of the application.

In the opinion of the Examining Division the measurement of said parameter was not clear and did not allow a comparison with the fabrics of D1. Thus, the strength parameter used in Claim 1, which was an essential feature of the invention, was not clearly defined and could not be measured unambiguously by the skilled person.

III. The Appellant (Applicant) lodged an appeal on 4 July 2001, paying the appeal fee on the same day, requesting that the decision be set aside and a patent be granted. It also requested oral proceedings.

The statement setting out the Grounds of Appeal was filed on 6 September 2001 together with an amended set of Claims 1 to 19. It was accompanied by the following new documents:

Exhibit A: US-6 231 976

Exhibit B: US-5 154 798 and

Exhibit C: Hearle, J.W.S. and Newton, A. (1967) Textile Research Journal, June 1967, 495 - 503.

The arguments put forward by the Appellant in its written submission, insofar as they relate to the lack of clarity objections, can be summarized as follows:

The parameter "g/denier" had been commonly used in the art to define the tenacity or strength of nonwoven fabrics. The measurement of this parameter was disclosed at page 496, right column of Exhibit C, and its common use was confirmed by Exhibits A (tables 2, 3 and 4) and B (Claim 1), where this parameter was used to define the tenacity or strength of a nonwoven fabric.

The measurement of the strength of the nonwoven fabric as defined in Claim 1 of the application was disclosed at page 13, line 16 - page 14, line 1 of the application, and it was a standard method that was similarly employed in the prior art. The Appellant further compared the strength values of test pieces according to D1 with those of the present application by converting the values in D1 into the strength parameter used in the application.

- IV. On 18 February 2005 the Board dispatched the summons to attend oral proceedings. The annexed communication pursuant to Article 11(1) of the Rules of Procedure of the Boards of Appeal drew the attention of the Appellant to the points to be discussed during the oral proceedings.

In the communication the Board acknowledged that the strength parameter, even if unusual, could not be

considered as unknown in the field and that a method for its measurement was described in the specification. The Board also pointed out, *inter alia*, that in order to allow the matter for which protection was sought to be defined, it must be clear from the claim itself how the parameter should be determined, either expressly, when this is reasonably practicable as in the present case, or by way of reference to the description according to Rule 29(6) EPC, and asked the Appellant to amend the claims accordingly.

- V. By letter dated 25 April 2005, the Appellant informed the Board that it would not attend the oral proceedings.
- VI. Oral proceedings were held on 21 June 2005 in the absence of the Appellant.
- VII. The Appellant requested in the statement setting out the Grounds of Appeal that the decision under appeal be set aside and a patent be granted on the basis of Claims 1 to 19 as filed with letter dated 6 September 2001.

Claim 1 reads as follows:

"1. A base fabric for an adhesive tape which is composed of at least one longitudinal base material of stretched unidirectionally aligned nonwoven fabric, which nonwoven fabric is obtainable by spinning a thermoplastic resin into a long filament nonwoven fabric and stretching it in one direction so as to align the filaments thereof almost in one direction, wherein the fineness of filaments of said stretched unidirectionally aligned nonwoven fabric is 1 denier of

less and the strength of said nonwoven fabric as a whole is 1.5 g/denier or more."

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Clarity (Article 84 EPC)*
  - 2.1 The clarity of Claims 1 to 19 has been objected to by the Examining Division because the subject-matter of the claims includes an unusual parameter, namely the strength of the nonwoven fabric as defined on page 13 of the application (cf. Claim 1 "... the strength of said nonwoven fabric as a whole is 1.5 g/denier or more"). The strength parameter, being an essential feature of the invention, was said not to be clearly defined and therefore cannot be measured unambiguously by the skilled person.
  - 2.2 According to Article 84 EPC, the claims define the matter for which protection is sought. In order to ensure legal certainty, this implies that the claims must be clear in themselves when being read by the competent technical expert exercising normal skills, without the need to resort to information derived from the description of the patent application.
  - 2.3 Thus, if the invention is characterised by parameters, the method of and means for measurement should appear completely in the claim itself, whenever this is reasonable, or by reference to the description in accordance with Rule 29(6) EPC, if the method is so

long that it would impair the conciseness of the claim. The introduction into the claim of such a definition for the determination of a parameter would only be superfluous where it could be shown that the skilled person would know from the outset which method and conditions to employ because, for instance, this methodology was the methodology commonly used in the technical field, or all the methodologies known in the relevant technical field for determining this parameter would yield the same result within the appropriate limit of measurement accuracy (cf. decision T 412/02 of 16 June 2004, not published in OJ EPO; points 5.8 and 5.9 of the Reasons).

2.4 In the present case, the claimed nonwoven fabric is characterised by its strength being "1.5 g/denier or more". The Appellant itself acknowledges at page 13, lines 16 - 22 of the description, that "the strength of web is generally represented by kilogram per square millimetre, but it will be represented herein by g/denier, because the base material used in the present invention is a mass of filaments, so that the cross sectional shape is not stable because it is changed with the pressure applied thereto." Thus, the inclusion into Claim 1 of the method of measurement of the (unusual) strength parameter is, in the present case, necessary for its unambiguous definition in order to meet the requirements of Article 84 EPC.

2.5 The Appellant was informed of this deficiency in the communication of the Board dated 18 February 2005. The Appellant has neither amended the claims nor provided any reasoning to justify a possible exception.



2.6 Consequently, since Claim 1 does not include the method of measurement of the strength parameter therein used to define the claimed fabrics, it does not satisfy the requirements of Article 84 EPC.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Röhn

P. Kitzmantel