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D E C I S I O N
of 9 March 2006

Case Number: T 0605/03 - 3.2.06

Application Number: 96923139.8

Publication Number: 0840585

IPC: A61F 13/56

Language of the proceedings: EN

Title of invention:

A method of manufacturing fastener-device elements and
elements manufactured in accordance with the method

Patentee:

SCA Hygiene Products AB

Opponent:

The Procter & Gamble Company

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 54, 56

Keyword:

"Admittance of new document - no"
"Novelty and inventive step - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0605/03 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 9 March 2006

Appellant: The Procter & Gamble Company
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Representative: McGregor, Judit Ester
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Respondent: SCA Hygiene Products AB
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Representative: Romare, Laila Anette
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
27 March 2003 concerning maintenance of
European patent No. 0840585 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Kadner
R. Menapace

Summary of Facts and Submissions

- I. The mention of grant of European patent No. 0 840 585 in respect of European patent application No. 96 923 139.8 claiming a Swedish priority from 7 July 1995 and filed on 27 June 1996 was published on 3 January 2001.
- II. Notice of opposition was filed against this patent with request for revocation based on the grounds of Article 100 a) and 100 b) EPC.

By decision posted on 27 March 2003, the Opposition Division maintained the European patent in amended form with 13 claims, the independent claims 1, 2, 3 and 9 reading as follows:

"1. A method of manufacturing fastener elements for fastening devices that are intended to be affixed to side-parts (2, 3) of an absorbent article (1) which includes a central part and front and rear side-parts (2, 3) which project out from respective sides of said central part, so as to enable the front and rear side-parts on one and the same side of the central part of the article to be joined together characterized by making a central, longitudinally extending wave-shaped slit (23) in a material web (21) which includes a row of mechanical fastening devices (22) which extends in the longitudinal direction of the material web, by extending the wave-shaped slit (23) laterally beyond the row of fastening devices (22) on both sides thereof and causing the longitudinally extending centre line thereof to coincidence with the longitudinally extending centre line of the row of fastening devices and by making transversal slits

(24, 25) which connect with the wave-shaped slit on both sides thereof, said transverse slits being mutually spaced in the longitudinal direction of the material web with a continuously repeated spacing sequence, so that fastener device elements including a row of tongues extending along one side of the element parallel with the row of fastening devices (22) is obtained.

2. A method of manufacturing fastener elements for fastening devices that are intended to be affixed to side-parts (2, 3) of an absorbent article (1) which includes a central part and front and rear side-parts (2, 3) which project out from respective sides of said central part, so as to enable the front and rear side-parts on one and the same side of the central part of the article to be joined together characterized by making a central, longitudinally extending wave-shaped slit (31) in a material web (28) which includes two continuous strings (29, 30) of mechanical fastening devices which extend in the longitudinal direction of the material web, and by making transversal slits (35, 36) which connect with the wave-shaped slit on both sides thereof, said transverse slits being mutually spaced in the longitudinal direction of the material web with a continuously repeated spacing sequence, so that fastener device elements including a row of tongues extending along one side of the element parallel with the strings (29, 30) of fastening devices (22) is obtained.

3. A method of manufacturing fastener elements for fastening devices that are intended to be affixed to

side-parts (2, 3) of an absorbent article (1) which includes a central part and front and rear side-parts (2, 3) which project out from respective sides of said central part, so as to enable the front and rear side-parts on one and the same side of the central part of the article to be joined together characterized by making a central, longitudinally extending wave-shaped slit (14; 14') in a material web (11; 11') which includes one single centre string of mechanical fastening-device blanks (12; 12') which extends in the longitudinal direction of the material web, and by causing the wave-shaped slit (14; 14') to extend transversely outside the string (12;12') of fastener-device blanks on both sides of said string (12; 12') and by making transversal slits (15-20; 15', 20) which connect with the wave-shaped slit on both sides thereof, said transverse slits being mutually spaced in the longitudinal direction of the material web with a continuously repeated spacing sequence, so that fastener device elements including a row of tongues extending along one side of the element parallel with the string of fastening devices is obtained.

9. An absorbent article including a fastener-device element which is attached to a side-part of an absorbent article (1), said article including a central part and front and rear side-parts (2, 3) that project out from the central part on both sides thereof, so as to enable front and rear side-parts on one and the same side of the central part of the article to be joined together, said element including one row or continuous string of fastener device (6; 22; 29, 30),

characterized in that the fastener element (4; 26, 27; 29,30) includes a row of outwardly projecting identically shaped tongues (7; 34) which extend along one side of said element parallel with the row or string of fastener devices (6; 22; 29, 30)."

The Opposition Division was of the opinion that the invention could be carried out by the skilled person. In fact, the Opponent's arguments concerned clarity matters rather than insufficiency of disclosure. The subject-matter of the independent claims 1 to 3 and 9 as amended was novel and involved an inventive step when compared with the prior art disclosed in:

D1: EP-A-0 233 704

D2: EP-A-0 396 050

D3: US-A-5 399 219

III. Notice of appeal was filed against this decision by the Appellant (Opponent) on 8 May 2003 together with a payment order for the appeal fee. With the grounds of appeal, received at the EPO on 2 July 2003, the Appellant filed the new prior art document:

D4: WO-A-95/05 140

IV. In a communication dated 18 November 2005 accompanying the summons to oral proceedings the Board expressed the view that the Opposition Division's conclusion in respect of novelty and inventive step appeared to be correct. Newly filed D4 did not seem to be pertinent and it would have to be discussed whether this document was sufficiently relevant for admission into the proceedings.

V. Oral proceedings were held on 9 March 2006 in the absence of the Appellant, which had been notified with facsimile dated 20 February 2006.

The Appellant had requested in writing that the decision under appeal be set aside and that the patent be revoked.

The Respondent (Patentee) requested that the decision under appeal be set aside and the patent be maintained with claims 1 to 13 underlying the decision under appeal and description, columns 1 and 2, as filed during the oral proceedings together with description columns 3 to 7 and Figures 1 to 12 as granted.

VI. In support of its requests the Appellant essentially relied upon the following submissions:

The subject-matter of claim 9 lacked novelty when compared with the device according to Figure 13 of D4 since also there a row of three identically shaped tongues could be identified. Novelty was also lacking with regard to the fastener assemblies disclosed in D3 (Figures 7, 8, 9, 12A and 13 B) or in D2 (Figures 9 to 11).

The method of claim 2 was not novel when compared with the teachings of D4 (page 3 to 4, Figure 7) because in that prior art a composite web with two strings of mechanical fasteners or receivers therefor were slit in the same manner as claimed in the patent in suit.

Furthermore the methods according to claims 1 and 3 lacked novelty in view of D3 (Figures 4, 10, 12 and 13 and related description).

Since the methods of claims 1 and 3 specified steps identical to those disclosed in D1, D2 or D3, and the method of claim 2 was anticipated by D4, none of these claims contained novel subject-matter.

In any case, none of the independent claims 1 to 3 and 9 involved an inventive step because the prior art documents D1 to D4 already disclosed the technique of cutting a web longitudinally with a wave shaped slit in order to produce fastening elements without waste of material. No inventiveness could be recognized in a mere application of a known process to make a known product.

VII. The arguments of the Respondent can be summarised as follows:

None of the documents D1 to D4 disclosed a multi-tongue fastener or a method of manufacturing such a multi-tongue fastener. The embodiment shown in D4 (Figure 13) was only a test sample, and no way for making the "tongues" was described.

As could be seen in D3 (Figure 11) these fasteners also were clearly of the single-tongue type. They should particularly avoid shifting and be more stable, and the proposed solution was the distribution of the force by a stress beam section. Consequently that prior art led away from the invention.

The problem underlying the patent in suit was to create a more flexible fastener which was not stiff although it had a greater width than the known fasteners. In the prior art documents, be it D1 to D3 or D4, any indication towards the claimed solutions was lacking.

Reasons for the Decision

1. The appeal is admissible.
2. *Late filed document D4*

The only embodiment disclosed in D4 of a fastener element for an absorbent article comprising a wave-shaped edge is that of Figures 13 and 14 concerning a test sample for use in a tensile tester. However, considering the production method described in D4 (see Figure 8B, Roll 66) and the resulting wave shape intended (see Figures 8A, 8B and 9A) for the fastener, the samples' edges shown in Figures 13 and 14 are obviously the result of the chosen width of 2 inches (see page 28, lines 28, 29 of D4). This width is not intended for the fastener element. Insofar all embodiments related to fasteners are of the single-tongue type. Therefore D4 does not go beyond the disclosure of D1 to D3, and consequently it is not introduced into the appeal proceedings.

3. *Novelty (Article 54 (2) EPC)*

The Board considers the reasons given by the Opposition Division in respect of novelty to be correct. In particular, none of documents D1 to D3 discloses a method by which fastener device elements including a row of tongues extending along one side of the element parallel with the row of fastening devices can be obtained, or an absorbent article including a fastener element device the fastener element of which includes a

row of outwardly projecting identically shaped tongues which extend along one side of said element parallel with the row or string of fastener devices.

The Appellant relied in particular on Figures 8 and 9 of D3 in support of the alleged disclosure of a fastening element with a row of fastening devices and with two identically shaped tongues parallel thereto. However, although these Figures might show such a configuration, no unambiguous disclosure or suggestion is derivable from D3 that component 178 is used as a fastener element in the manner as claimed in the patent in suit. In fact, during the production process of the absorbent article these paired panel-and-fastener components 178 are divided into two individual (single-tongue) panel-and-fastener components 166 (see column 24, lines 42 to 47 of D3).

4. *Inventive step (Article 56 EPC)*

Also in this respect the Board agrees with the Opposition Division's conclusion. The Appellant repeated its arguments brought forward in the opposition proceedings, but did not provide any new evidence or further arguments which would lead to reconsideration of the decision under appeal. None of the prior art documents alone or in combination deals with the problem underlying the patent in suit or the claimed solutions which, thus, would not have been found by the skilled person without the involvement of an inventive step.

5. Since the description was not yet consistent with the claims maintained in opposition in amended form, it had to be adapted to them. Therefore the patent is

maintained according to the Respondent's request with the claims upheld in opposition and the description as amended during the oral proceedings before the Board of Appeal.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of the following documents:

Claims 1 to 13 and description, columns 1 and 2, as filed during the oral proceedings together with description columns 3 to 7 and Figures 1 to 12 as granted.

The Registrar:

The Chairman:

D. Sauter

P. Alting van Geusau