

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 20 November 2008**

Case Number: T 0464/08 - 3.2.04

Application Number: 04030009.7

Publication Number: 1523922

IPC: A47L 13/16

Language of the proceedings: EN

Title of invention:

Cleaning article

Applicant:

UNI-CHARM CORPORATION

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 76(1), 111(1)

Keyword:

"Divisional - added subject-matter (no)"

Decisions cited:

G 0001/05, G 0001/06, T 0770/90, T 1067/97, T 0714/00,
T 0025/03, T 1500/07, T 1501/07, T 1502/07

Catchword:

-



Case Number: T 0464/08 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 November 2008

Appellant: UNI-CHARM CORPORATION
182 Shimobun
Kinsei-cho
Shikokuchuo-shi
Ehime-ken (JP)

Representative: Eke, Philippa Dianne
Saunders & Dolleymore
European Patent Attorneys
9 Rickmansworth Road
Watford WD18 0JU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 August 2007
refusing European application No. 04030009.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
T. Bokor

Summary of Facts and Submissions

I. The Appellant lodged an appeal, received 16 October 2007, against the decision of the Examining Division posted 16 August 2007, refusing the European patent application No. 04 030 009.7 and simultaneously paid the required fee. The grounds of appeal were received 21 December 2007.

In its decision the Examining Division held that the application, which was filed as a divisional from an earlier European application No. 01 947 846.0, extended beyond the content of the earlier application contrary to the requirements of Article 76(1) EPC.

II. Oral proceedings before the Board, auxiliarily requested by the Appellant, were held 20 November 2008.

III. The Appellant requests that the decision under appeal be set aside and that the application proceed on the basis of claims 1 to 4 according to a main and sole request filed at the oral proceedings.

IV. Claim 1 of the main request reads as follows:

"A cleaning article (1) comprising an outermost base sheet (15), a base sheet (2), a first fibre bundle layer (3), a second fibre bundle layer (4), a third fibre bundle layer (6), and a secondary sheet (5), wherein:

over the cleaning face of the outermost base sheet, there lies the base sheet;

over the cleaning face (2A) of the base sheet, there lies sequentially the first fibre bundle layer (3), the

second fibre bundle layer (4), the third fibre bundle layer (6) and the secondary sheet (5);
the first fibre bundle layer has a predetermined bulk over the cleaning face of the base sheet;
the base sheet (2), and the secondary sheet (5) each have a central region (2a) and two strip-forming regions (2b) lying opposite one another and sandwiching the central region therebetween;
a plurality of cuts (11) extend in a zigzag or saw-tooth shape inwardly from two opposite edges of the base sheet and the secondary sheet to form a plurality of strips (12, 17);
the outermost base sheet, the base sheet and the first fibre bundle layer are joined together by fusion-bonding at a pair of joining lines (13) which are formed along the parallel boundary lines between the central region (2a) and the strip-forming regions (2b) of the base sheet;
the outermost base sheet, the base sheet, the three fibre bundle layers and the secondary sheet are joined altogether by fusion-bonding by an all-layer joining line (7) which is formed midway between the pair of parallel joining lines (13);
the fibre bundle layers each comprise thermoplastic fibers which extend continuously in one direction to traverse the fibre bundle layers; and
the outermost base sheet, the base sheet and the secondary sheet are formed by a nonwoven fabric comprising thermoplastic fibres or a thermoplastic resin film or a laminated sheet of nonwoven fabric comprising thermoplastic fibres and a thermoplastic resin film."

Reasons for the Decision

The present application was pending at the time of entry into force of the revised EPC 2000 on 13 December 2007. In accordance with Article 7 of the Act revising the EPC of 29 November 2000 in conjunction with Article 2, paragraph 1, of the decision of the Administrative Council of 28 June 2001 relevant Article 123 therefore applies in its version under EPC 2000, whereas Articles 76(1) and 111(2) EPC (neither listed in Article 2, paragraph 1) continue to apply in their 1973 versions. Where not explicitly indicated otherwise an article mentioned below refers to the EPC 2000 version. The substance of these articles is unaffected by the revision.

1. The appeal is admissible.
2. *Legal framework : Article 76(1) EPC 1973*

The legal framework for determining compliance with Article 76(1) EPC 1973, second sentence, is discussed in decisions T 1500/07, T 1501/07 and T1502/07 issued by this Board and concerning divisional applications based on the same parent, see in particular reasons 2. In summary, as follows from reasons 5.1 of G 1/05 (OJ EPO 2008, 271) and G 1/06 (OJ EPO 2008, 307) the main criterion for assessing compliance of Article 76(1) is essentially the same as that applied when assessing compliance to Article 123(2) EPC. Thus subject-matter of the divisional must be *directly and unambiguously* derivable by the skilled person from the earlier disclosure, as determined by the *totality* of claims, description and figures of the as filed earlier

application when read in context. In the instance of claim features being extracted in isolation from detailed embodiments in the description, this means, following established case law of T 1067/97, T 714/00 or T 25/03, it should be clearly recognizable that these features are not inextricably linked in terms of function or structure with the remaining features of the embodiment. Here, following T 770/90, an unduly broad filed claim cannot justify new feature combinations.

3. *Parent and Divisional as filed*

3.1 The central idea of the earlier, or parent application concerns the use of strips (in a sheet) in a cleaning article to give a fibre bundle layer forming brush portions increased rigidity and reduce the risk of entanglement so that the brush retains its shape and dust trapping ability (see in particular the last paragraph of page 2 to 2nd paragraph of page 3). This main idea is realized in various embodiments which can be arranged into two main groups, the first corresponding to figures 1 to 6 where the various cleaning layers are arranged only on one side of a base sheet, and the second group shown in figures 7 to 9 where cleaning layers are provided on both sides.

3.2 The present divisional application is directed an embodiment within the first group, namely that of figure 6, detailed on pages 22 to 24 of the parent application as filed. In this embodiment the fibre bundle layer is sandwiched between base and secondary strip bearing sheets.

3.3 As is clear from the opening lines of parent description page 22, the figure 6 embodiment is "a modification of the first embodiment of the invention" and is arrived at by "changing the order of the ... layers of the cleaning article of Figs. 1 to 5." By inference the embodiment of figure 6 thus includes all features of that first embodiment, apart from layer order and in so far pages 22 to 24 does not state otherwise. Pages 22 to 24 through the use of terms such as "may" or "it is possible" indicate that certain features are to be regarded as purely optional. The core of the figure 6 embodiment is accordingly determined by the "core" features of the first embodiment of figures 1 to 5, with changed order of layering, and disregarding any features which pages 22 to 24 describe as optional. Here, the Board uses the term "core" to denote those feature which the skilled person *immediately and unequivocally* recognizes as not *incidental* to the proper functioning of this embodiment, and which cannot be dispensed with without consequence for the remaining features, see this Board's reasoning in related case T 1501/07, reasons 3.7.

3.4 The core of the embodiment of figures 1 to 5 is set out in the fifth auxiliary request submitted in the related case T 1502/07 and on the basis of which the present Board remitted that case to the department of first instance, see reasons 3 to 5. With regard to this central set of features, claim 1 of the present main request firstly defines the changed order of sheets and fibre bundle layers. However, it does not include features directly relating to the holding sheet and the holding spaces defined thereby, as lines 11 to 14 of page 23 of the parent description indicates that a

holding sheet arrangement as in figure 3 is "also possible" and thus optional. Further lines 2 to 10 of page 23 describe both the joining of the second and third fibre layers with the strips of the secondary sheet at joining lines 18 as well as the further set of zigzag joining lines 14 as optional ("may"), and these features also do not figure in claim 1. Claim 1 does, on the other hand, include a further option of a laminate for the sheet material not present in claim 1 of the fifth auxiliary request in case T 1502/07. This derives from parent description page 10, lines 17 to 19.

3.5 The optional features of holding sheet and holding arrangement is the subject of dependent claim 2, while those of dependent claims 3 and 4 relating to the holder derive directly from the first paragraph of parent description page 19.

3.6 The Board concludes from the above that the claimed combinations of features are directly and unambiguously derivable from the parent application. Therefore the claims do not add subject-matter extending beyond the content of the earlier parent application and are in accordance with Article 76(1) EPC 1973. Given the fact that the relevant parts of the description of parent and the divisional are identical, the above amended version of claim 1 also has clear basis in the divisional application itself, and thus also meets the requirements of Article 123(2) EPC.

4. *Remittal*

The decision under appeal concerned only the issue of Article 76(1) EPC 1973, and did not consider any of the

further requirements of the EPC, in particular those of novelty and inventive step. So as not to deprive the Appellant of a first instance consideration of these remaining requirements, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC 1973 to remit the case for further prosecution on the basis of the set of claims of the main request. Any such further prosecution may at some stage need to consider adaptation of the description.

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 for further prosecution.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte