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**Datasheet for the decision
of 30 November 2016**

Case Number: T 0794/12 - 3.2.06

Application Number: 01930241.3

Publication Number: 1293187

IPC: A61F13/532, A61F13/15

Language of the proceedings: EN

Title of invention:

ULTRA-THIN ABSORBING SHEET BODY, DISPOSABLE ABSORBENT ARTICLE PROVIDED WITH ULTRA-THIN ABSORBING SHEET BODY AND PRODUCTION DEVICE FOR ULTRA-THIN ABSORBING SHEET BODY

Patent Proprietor:

Livedo Corporation

Opponents:

The Procter & Gamble Company
SCA Hygiene Products AB

Relevant legal provisions:

EPC Art. 83, 84, 123(2)
RPBA Art. 13(1)

Keyword:

Sufficiency of disclosure - enabling disclosure (no)
Late-filed auxiliary requests - amendments after arrangement
of oral proceedings - request clearly allowable (no)

Decisions cited:

T 0815/07



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0794/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 30 November 2016

Appellant: Livedo Corporation
(Patent Proprietor) 45-2, Handaotsu,
Kanadacho
Shikokuchuo-shi, Ehime (JP)

Representative: Müller-Boré & Partner
Patentanwälte PartG mbB
Friedenheimer Brücke 21
80639 München (DE)

Appellant: The Procter & Gamble Company
(Opponent 1) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Anderson, James Edward George
Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Party as of right: SCA Hygiene Products AB
(Opponent 2) 405 03 Göteborg (SE)

Representative: Gray, Helen Mary
Zacco Sweden AB
P.O. Box 5581
114 85 Stockholm (SE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 February 2012 concerning maintenance of the
European Patent No. 1293187 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: G. de Crignis
E. Kossonakou

Summary of Facts and Submissions

- I. Appeals were filed by the patent proprietor and opponents OI and OII against the interlocutory decision of the opposition division which found that European Patent No. 1 293 187 in an amended form met the requirements of the European Patent Convention (EPC). Since in the present case all parties are both appellants and respondents, they will hereafter be referred to as patent proprietor, opponent I and opponent II.
- II. The patent proprietor requested in its grounds of appeal to set aside the decision and to maintain the patent on the basis of a new main request, subsidiarily on the basis of a first and second auxiliary request, the latter corresponding to the request found allowable by the opposition division.
- III. In its grounds of appeal, opponent OI requested revocation of the patent.
- IV. Opponent OII withdrew the appeal before filing any grounds of appeal.
- V. The patent proprietor replied to the appeal of opponent OI and requested dismissal thereof. Likewise, opponent OI replied to the patent proprietor's appeal and requested dismissal of its appeal.
- VI. In a communication annexed to the summons to oral proceedings, the Board indicated its preliminary view that it had serious doubts as to whether the disclosure in the patent in suit was sufficiently clear and

complete for the skilled person to carry out the invention.

VII. With letter of 2 September 2016, opponent OII informed the Board that it did not intend to participate in the oral proceedings.

VIII. With letter of 26 October 2016, the patent proprietor filed auxiliary requests 3 to 5 together with

Annex A: A document produced by Livedo Corporation, Atsushi Hashimoto, entitled "Example of a common method of measuring the amount of hotmelt adhesive", pages 1 to 22.

IX. Oral proceedings were held before the Board on 30 November 2016.

The patent proprietor requested that the decision under appeal be set aside and that the patent be maintained on the basis of the claims of one of

- the main request, the first or second auxiliary request (the latter corresponding to the claims found to conform to the EPC by the opposition division), all three requests filed with the statement setting out the grounds of appeal of 25 May 2012, or
- of one of the 3rd to 5th auxiliary requests, filed with the submission of 26 October 2016.

Further, that Mr Hashimoto be allowed to speak as a technical expert.

Opponent OI requested that the decision under appeal be set aside and that the European patent No 1 293 187 be revoked; also, that Mr Hashimoto not be allowed to speak as a technical expert.

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

"An ultra-thin absorbent sheet member (1a) in which an absorbent polymer powder is adhered to one surface of a first nonwoven fabric (2) having a rectangular, square, sandglass-shaped or cocoon-shaped form, by a hotmelt adhesive selected from the group of styrene elastomers, ethylene-vinyl acetate copolymers, polyester elastomers, acrylic elastomers, polyolefin elastomers and rubber, such that an absorbent polymer powder present area (2c) and an absorbent polymer powder absent area (2a, 2b) exist, wherein:

the absorbent polymer powder absent area (2a) is present at opposite width-wise end portions of the ultra-thin absorbent sheet member and at least one location between the opposite width-wise end portions (2b),

the absorbent polymer powder is bonded to the first nonwoven fabric (2) by a first hotmelt adhesive layer (S1) formed at an upper side of the first nonwoven fabric (2) and at a lower side of the absorbent polymer powder and a second hotmelt adhesive layer (S2) formed to cover upper sides of the absorbent polymer powder present area (2c) and the absorbent polymer powder absent area (2a, 2b),

the first and second hotmelt adhesive layers (S1, S2) are both made of an aggregate of linear hotmelt adhesive pieces, wherein adhered amounts of the first and second hotmelt adhesive layers are both 1 to 20 g/m²."

Claim 1 of each of auxiliary requests 2 to 4 includes the feature concerning the adhered amounts of the first and second hotmelt adhesive layers being both 1 to 20 g/m² as defined in claim 1 of the main request. This

feature being decisive, it is not necessary to refer to the further amendments in claim 1 of these requests.

Claim 1 of auxiliary request 5 reads:

"A method of manufacturing an ultra-thin absorbent sheet member (1b) in which an absorbent polymer powder is adhered between a first and a second nonwoven fabric (2, 4) having a rectangular, square, sandglass-shaped or cocoon-shaped form, by a first and a second hotmelt adhesive layer (S1, S2) such that an absorbent polymer powder present area (2c) and an absorbent polymer powder absent area (2a, 2b) exist, wherein:

the absorbent polymer powder absent area (2a) is present at opposite width-wise end portions of the ultra-thin absorbent sheet member and at least one location between the opposite width-wise end portions (2b),

comprising the steps of:

forming the first hotmelt adhesive layer (S1) at an upper side of the first nonwoven fabric (2) and at a lower side of the absorbent polymer powder,

forming the second hotmelt adhesive layer (S2) at a lower side of the second nonwoven fabric (4) so as to cover at least an upper side of the absorbent polymer powder present area (2c),

wherein the first and second hotmelt adhesive layers (S1, S2) are both made of an aggregate of linear hotmelt adhesive pieces, wherein adhered amounts of the first and second hotmelt adhesive layers are both 1 to 20 g/m², and the hotmelt adhesive is selected from styrene elastomers or ethylene-vinyl acetate copolymers, and

wherein the first hotmelt adhesive layer (S1) takes a network structure formed by randomly adhering a large number of fibrillated hotmelt adhesive pieces to each

other, and the second hotmelt adhesive layer (S2) is formed by placing a plurality of linear hotmelt adhesive pieces having a spiral contour one over another."

XI. The arguments of the patent proprietor may be summarised as follows:

The request for Mr. Hashimoto to be allowed to speak as a technical expert was maintained, in order for him to give technical information and assistance. As Mr. Hashimoto was present, information from him could also be obtained, if necessary, during breaks of the oral proceedings.

The determination of the deposited/adhered amount of hot melt adhesive on a nonwoven sheet was within the customary practice and part of the common general knowledge of a skilled person. The embodiments shown in Figures 1 to 4 of the patent showed that it was clear how to specify the amount of both hotmelt adhesive layers at specific regions/areas. The skilled person would only consider areas of a product which were actually provided with adhesive.

E8 (US-A- 5 830 202), col. 4, l. 47 - 51, - although not relied upon - provided indirect evidence that it would naturally be considered in this way.

It was incorrect to require that the amount of adhesive of the first and second layers had to be determined. That was a matter of potential infringement, not one of being able to arrive at an article according to claim 1. Even if this view were followed, Annex A provided evidence for the determination of the amount of adhesives being well-known to the skilled person. In order to determine the adhered amount of the hotmelt

adhesive layers S1 and S2 individually, the nonwoven layers had to be separated from each other and the absorbent polymer powder had to be removed from the test sample. The adhesive had to be dissolved in an organic solvent, the organic solvent evaporated and the evaporation residues weighed. The area to be taken into account was known from the data controlling the manufacturing process.

The skilled person knew that the amount of hotmelt adhesive deposited on a layer could be adjusted during the manufacturing process. The amount of adhesive actually provided per unit area was set out via the width, speed and air conditions implemented in the manufacturing process. Thus it was clearly understood what the terminology "wherein adhered amounts of the first and second hotmelt adhesive layers are both 1 to 20 g/m²" entailed.

Since the skilled person knew how much adhesive was being applied at any moment, there was no difficulty in arriving at a product according to claim 1.

Filing the third to fifth auxiliary requests was a reaction to the communication of the Board. An earlier reaction had not been possible.

Claim 1 of the fifth auxiliary request was directed to a method, since the Board had indicated in point 2.2. of its communication that there was no doubt that the amount of adhesive could be adjusted. In such a way, the objection could be overcome. There was no need to give further manufacturing details, even though the claim was under a new category, since the relevant method steps were clear to the skilled person, so that

the change of category did not give rise to an objection under Article 84 EPC.

The method was also disclosed in the whole application and particularly in originally filed claim 3, in Figure 4, as well as in paragraphs 21, 22, 37 and 52 of the A-publication. It was not necessary to rely on one of the manufacturing processes disclosed in Figures 7 or 10. Thus, - although filed at a late stage of proceedings - the fifth auxiliary request should be admitted.

XII. The arguments of the opponent may be summarised as follows:

Mr. Hashimoto should not be allowed to make oral submissions. The criteria for deciding such a request as specified in G 4/95 were not met.

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. The units of g/m^2 for the amount of adhesive in the absorbent sheet member implied that the adhered amounts of the layers had to be measured by dividing a mass of adhesive by an area. It was not known whether this area should be that of the sheet member as a whole to which the adhesive was applied, or that of particular areas of the sheet member actually provided with adhesive, and if so, how to identify the areas.

Different measurement approaches would inevitably lead to completely different results for the measured amounts of adhesive, and claim 1 relied on these values as the essence of the invention. Since the patent even contemplated the patterned application of the hotmelt adhesive (even checkerboard-wise), or such as having

spiral contours, the area of the adhesive which might be measured was also not defined. Accordingly there was no possibility of determining reliably and reproducibly the adhered amounts of adhesive per unit area.

E8 was not cited in the patent in suit, it was not relevant and it did not support the proprietor's argument. It stated that the area used to calculate the basis weight of the absorbent gelling materials was the area of the zone to which they were applied (col. 4, l. 47 - 51). This passage provided evidence of the need to expressly state the area basis for calculating an application rate-type parameter.

Annex A did not alter this lack of information. It only provided evidence that when applying the adhesive on the whole area, respectively on a known percentage of the area of the nonwoven layer, and using specific nonwovens and adhesives, a calculation was possible. However, this was not in dispute.

Concerning claim 1 of auxiliary request 5, it met *prima facie* neither the requirement of Article 123(2) EPC nor of Article 84 EPC due to the change of category. There was no such method disclosed in the application as filed, nor were any method steps included in the claim of changed category.

The Board should exercise its discretion under Article 13(1) RPBA and not admit auxiliary request 5 which could and should have been filed earlier. All objections had been raised already in the grounds of appeal.

Reasons for the Decision

1. Request for oral submissions by Mr. Hashimoto

1.1 The request for allowing Mr. Hashimoto to make submissions during the oral proceedings does not specify the qualifications of Mr. Hashimoto nor the subject-matter of the proposed submissions. In the absence of this information, criterion (i) of G 4/95 (see reasons, 2.2) is not met. The opponent also objected to Mr. Hashimoto acting as a technical expert.

1.2 However, it was not necessary to decide on this matter, as no occasion arose during the oral proceedings where the proprietor's representatives asked that Mr. Hashimoto be allowed to speak.

2. Main Request

2.1 Claim 1 refers to an ultra-thin absorbent sheet member and includes the feature of "adhered amounts of the first and second hot melt adhesive layers are both 1 to 20 g/m²".

2.2 The unit g/m² for the amount of adhesive layers implies that the respective amount has to be determined by dividing the mass of adhesive by a particular area.

2.3 No disclosure is present in the patent with regard to identifying the specific area to be considered. Also, no test method is defined. Further, no example is disclosed which might help explain any test conditions applied. This as such was not disputed.

- 2.4 Nor can the Board see any inference in the description or Figures which would allow a skilled person to deduce which particular area has to be taken into account to calculate the adhered amounts of the adhesive layers in an absorbent sheet member.
- 2.5 Concerning the area to be taken into account, the opposition division held that the skilled person would consider only the portions of the product which were actually provided with adhesive and not the whole area of a sheet or the product.
- 2.6 This latter conclusion was considered by the opposition division as being confirmed indirectly by E8, col. 4, l. 47-51 which refers to the calculation of an average basis weight of absorbent gelling material particles provided in the acquisition and storage zone on the basis of only the area of covered zones to be taken into account.
- 2.7 The Board however finds differently.
- 2.8 Concerning E8, this is not referred to in the patent in suit. Moreover, E8 is not related to the calculation of adhesive amounts in an absorbent member but to the calculation of an average basis weight of the absorbent gelling material particles in the acquisition zone or in the storage zone. E8 explicitly states that the total amount of absorbent gelling material particles in each zone shall be divided by the surface area of the zone. Hence, the teaching of E8 underlines the necessity to indicate the area to be considered.
- 2.9 Concerning the area to be taken into account in the patent in suit, the skilled person could select either the complete area of the nonwoven sheet, the whole area

which was "covered" by both adhesives (i.e. a type of theoretical boundary around adhesive areas, including areas absent of adhesive but within such boundary) or select each area covered selectively and only by each adhesive individually. The selection of the area of the complete sheet member is for example equally plausible as the selection of only partial area(s) of the sheet member and all these options are disclosed (see e.g. paragraphs 31, 32, 33, 47, 53, 64, 65 of the patent in suit).

2.9.1 When considering the partial areas of the sheet member actually provided with adhesive, the first hotmelt adhesive layer can be provided over the entire surface of the first nonwoven fabric or in specified portions in relation to the absorbent powder absent areas and the absorbent polymer present areas. It is disclosed with the possibility of extending into the absorbent polymer powder absent areas (see paragraph 47), in which latter case it is co-existent with the second hotmelt adhesive layer in the absorbent polymer powder absent areas, which renders the identification of the distinct areas speculative in that there is no indication as to how to identify the boundaries between the first and the second hotmelt adhesive layers which can be formed of the same material (see paragraph 55).

2.9.2 The argument of the patent proprietor that different melting behaviours between the adhesives exist, one layer being applied and semi-hardening before the other is applied, lacks relevance, first in that no evidence to this effect has been submitted, but also since it is not credible when considering the scope of the claim - which, as undisputed, includes the most normal case - where the adhesive layers are formed of the same

adhesive material, and where the sheet layers of the article may even be bonded together by heat.

- 2.9.3 The objection that the areas of the hotmelt adhesive layers are not known applies irrespective of the further suggestion of the opponent that also areas within a spiral-coated adhesive area could be counted as adhesive-absent areas depending on the shape and spiral loop distances of the spiral coating.
- 2.9.4 The patent proprietor argued that it was only the area which was actually provided with adhesive which had to be taken into account. First, there is no such statement in the patent, such that this remains nothing more than an unsupported supposition. Further it may be remarked that there is no disclosure of a procedure for identifying such an area nor is there an example disclosed identifying any such area. The further argument that the amount applied per unit area could be set, and that the area could be identified via the manufacturing data (width, speed, air), does not address the issue that it is an article which is claimed and where it must be possible to establish the parameter being claimed, namely amount of adhesive per unit area in order that the skilled person can determine whether the invention has been performed or not (see e.g. T 815/07, Reasons, 5).
- 2.9.5 With respect to the proprietor's argument that establishing amounts of adhesive per unit area is a matter of determining whether a certain article infringes or not, this is not accepted. In the present case, even if were accepted that the amount of adhesive *per se* could be reliably measured, the area of measurement still has to be known, since the invention according to claim 1 requires this in order to fulfil

the parameter. Without such information, the ability to carry out the invention over the whole scope of the claim is left to a purely arbitrary determination, which the Board finds to be a matter of sufficiency (Article 83 EPC) and not a matter of determining possible infringement of other articles, albeit that determining the latter might also be left to an arbitrary choice of selected areas.

2.10 In support of its argument that it was in the customary practice of a skilled person how to determine the adhered/deposited amount of adhesive in an article, the proprietor additionally referred

- (a) to the common general knowledge of the skilled person with regard to corresponding test methods,
- (b) to the embodiments shown in Figures 1 to 4 as specifying the amount of both hotmelt adhesive layers at specific regions/areas and
- (c) to such knowledge being exemplified by Annex A enclosed in its reply to the communication of the Board.

2.11 None of these arguments is however persuasive.

2.11.1 No evidence has been provided for the existence of common general knowledge with regard to a defined determination method without including the reference to a defined area for the test. Thus, although generally a test method concerning an adhered/deposited amount of adhesive can be acknowledged as being a method which would rely on the mass of adhesive divided by the area concerned, this does not alter the fact that the particular area must be defined.

2.11.2 The reference to the embodiments shown in Figures 1 to 4 concerns two specific embodiments having a hotmelt

adhesive layer S1 deposited in two longitudinal stripes underlying the absorbent polymer powder present area and a hotmelt adhesive layer S2 covering the whole area of the sheet member. No data/values are disclosed concerning the application areas of the adhesive layers which would allow a skilled person to reproduce and understand a concept for calculating the amounts of both hotmelt adhesive layers. It is also noted that claim 1 is anyway not limited to such embodiments. The reference to particular embodiments cannot overcome the objection of no test method (in particular with regard to the area to be considered) being disclosed.

- 2.11.3 Annex A was submitted as evidence for a commonly known method. It represents a written report of an "example of a common method of measuring the amount of hotmelt adhesive".

This report refers to the steps of separation of the layers, removal of the absorbent polymer powder and dissolving the adhesive in an organic solvent, then to the evaporation of the organic solvent followed by weighing the residues for each layer separately. The tested sheet is rather specifically manufactured, without however giving specific details, for example of the material used and the adhesives chosen. Notably however, the whole area of the first nonwoven fabric 2 is reported to be covered with the adhesive layer S1 (curtain spray-coated) and hence, the area for the calculation of the amount of this adhesive layer is stated to be 100% of the sheet area, and it is reported that 90% of the area of the second nonwoven fabric 4 are spirally spray-coated with the adhesive layer S2. This design corresponds generally to the particular option given in the last sentence of paragraph 47 which states that "if the second hotmelt adhesive layer S2 is

not provided over the entire surface of the second nonwoven fabric 4 in the ultra-thin absorbent sheet member 1b, the first hotmelt adhesive layers S1 may be provided over the entire surface of the first nonwoven fabric 2". It is not explained in Annex A how the values for the percentage of the area covered by adhesive layers S1 and S2 have been verified. Concerning the preferred design options with regard to the adhesive layers referring to the first hotmelt adhesive layers S1 not being formed over the entire surface of the nonwoven fabric 2, no submission was made. Additionally, it is not indicated which materials are used for the different layers (nonwoven fabrics 2 and 4, hotmelt adhesive layers S1, S2 and for the absorbent polymer powder) and the area covered by the absorbent polymer powder is not defined either.

Hence, Annex A does not answer the questions of how to separate in any case overlaying layers of first and second hotmelt adhesives in the absorbent polymer powder absent area, how to identify the specific amount for each of the first and second hotmelt adhesive layer in adhesively overlaying regions, or most importantly, how to identify the percentage of area covered by each adhesive - in particular in embodiments having absorbent polymer powder absent areas being set such as intersecting in a checkerboard, rectangular, rhombic or other polygonal strip portion form. Hence, the example given in Annex A cannot generally explain how to set up a test method for the invention defined by claim 1.

2.12 Accordingly, the patent in suit does not provide a sufficiently clear and complete disclosure to reliably establish the parameters of the hotmelt adhesives which are defined by the invention according to claim 1, such that the skilled person has insufficient information

how to carry out the invention according to claim 1.
Thus, the requirement of Article 83 EPC is not met.

3. *Auxiliary requests 1 to 4*

3.1 Claim 1 of these requests includes the above objected feature and the arguments set out above apply equally. No additional arguments were presented. Accordingly, the above conclusion applies equally to these requests.

4. *Auxiliary request 5*

4.1 This request was filed in reply to the communication of the Board. According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), it lies within the discretion of the Board to admit any amendment to a party's case after it has filed its grounds of appeal or reply. In order to be admitted at such a late stage of proceedings, a request should normally be clearly allowable at least in the sense that it overcomes the objections raised and does not give rise to new objections, otherwise procedural economy, defined as one of the factors to consider in Article 13(1) RPBA, is adversely affected.

4.2 The request differs from all previous requests in that its claim 1 is directed to a method of manufacturing an ultra-thin absorbent sheet member. Claim 1 does not include a method step which concerns the manufacturing or depositing of an absorbent layer or method steps in relation to the deposition of the adhesive layers.

4.3 The patent proprietor argued that the skilled person understood that with regard to the absorbent polymer powder present area "is present" or "exist" meant that such an area "has to be made present". However, there

is now claimed a manufacturing method and accordingly, the wording has to be consistent therewith. There are various ways to implement the presence of a layer, and a manufacturing method would need to define the implementation to be considered - in view of the sequential nature of the method steps as well as in view of the position of a layer. Thus, the request raises at least *prima facie* an objection due to the change of category of the claim (under Article 84 EPC), since no clearly identifiable method steps are provided.

4.4 In claim 1 only the steps of forming the first and the second hotmelt adhesive layers are amended to relate to method steps. These steps read:

"forming the first hotmelt adhesive layer (S1) at an upper side of the first nonwoven fabric (2) and at a lower side of the absorbent polymer powder" and "forming the second hotmelt adhesive layer (S2) at a lower side of the second nonwoven fabric (4) so as to cover at least an upper side of the absorbent polymer powder present area (2c)".

4.5 A further issue is also, whether at least *prima facie*, the claimed subject-matter can be directly and unambiguously derived by the skilled person from the application as originally filed (Article 123(2) EPC).

4.6 The patent proprietor argued that the claimed method was disclosed in the whole application as filed. For support it referred in particular to originally filed claim 3 and to paragraphs 21, 22, 37 and 52 in the A-publication. However, neither the whole application, nor claim 3 or the cited paragraphs, disclose the claimed method.

4.7 Originally filed claim 3 refers to the ultra-thin absorbent sheet as an article. The hotmelt adhesive layers disclosed in claim 3 are defined as being "formed at" specific sides of the respective nonwoven layers and at defined sides of the absorbent polymer powder. This is simply a definition of the article structure. It does not disclose any "forming" step which leads to this structure. No disclosure concerning the manufacturing conditions *inter alia* with regard to the steps required or with regard to the amounts or the structural characteristics concerning the selection of the hotmelt adhesive for the adhesive layers is included.

4.8 The cited paragraphs refer to preferred and/or optional features.

Paragraph 21 refers to a preferred feature concerning the first hotmelt adhesive layer which takes a network structure formed by randomly adhering a large number of fibrillated hotmelt adhesive pieces to each other.

Paragraph 22 refers to a preferred feature concerning the second hotmelt adhesive layer which accordingly is formed by placing a plurality of linear hotmelt adhesive pieces having a spiral contour one over another. Further it refers to the fact that this layer may be formed by placing a network structure formed by randomly adhering a large number of fibrillated hotmelt adhesive pieces to each other and a plurality of linear hotmelt adhesive pieces having a spiral contour one over another, and states that the adhered amounts of the first and second hotmelt adhesive layers are both preferably 1 to 20 g/m². Additionally a preferred range for the air permeability of the ultra-thin absorbent sheet member is disclosed.

Paragraph 37 refers to possibilities for the shape of the first and second nonwoven fabrics.

Paragraph 52 indicates which kinds of hotmelt adhesives can be used to form the first and second hotmelt adhesive layers.

4.9 Accordingly, none of these paragraphs discloses the specific combination of features of claim 1. There is also no reason for the skilled person to combine specifically the preferred features disclosed in these paragraphs - and to omit other features. The patent proprietor has simply "cherry-picked" elements from the disclosure and created a new, previously undisclosed, combination of features. Therefore, at least *prima facie*, the skilled person could not derive the claimed subject-matter directly and unambiguously, using common general knowledge from the application as filed (Article 123(2) EPC).

4.10 This conclusion applies *a fortiori* in view of explicitly two manufacturing methods being disclosed and shown in Figures 7 and 10. The application as filed includes a specific pointer to these particular manufacturing methods - which include a variety of sequential method steps in order to obtain the desired sheet member - but no suggestion to the now claimed far more general method. However, the patent proprietor argued that it was not necessary to rely on one of the disclosed manufacturing processes. This argument is not accepted in that a variety of sequential method steps are necessary to arrive at the disclosed ultra-thin absorbent sheet member and only for these two manufacturing methods are the steps disclosed. Therefore, at least *prima facie*, claim 1 of auxiliary

request 5 contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

4.11 Thus, the Board exercised its discretion under Article 13(1) RPBA not to admit the request into the proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated