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**Datasheet for the decision
of 11 July 2017**

Case Number: T 0225/13 - 3.2.06

Application Number: 07004278.3

Publication Number: 1849445

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

Disposable absorbent article and method of manufacturing the same

Patent Proprietor:

Livedo Corporation

Opponent:

Paul Hartmann AG

Relevant legal provisions:

EPC Art. 54, 56, 114(2), 123(2)
RPBA Art. 13(1)

Keyword:

Novelty - main request (yes)

Inventive step - main request (no)

Late submitted documents E1 to E5 - not admitted

Auxiliary requests I / II - not allowable

Auxiliary requests IIa to IIId and III to V - not admitted



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Case Number: T 0225/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 11 July 2017

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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
26 November 2012 concerning maintenance of the
European Patent No. 1849445 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: G. de Crignis
W. Ungler

Summary of Facts and Submissions

I. By way of its interlocutory decision, the opposition division found that European Patent No. 1 849 445 in amended form according to an auxiliary request met the requirements of the European Patent Convention (EPC).

II. The appellant (opponent) filed an appeal against this decision and referred *inter alia* to:

D10 EP-A-1 787 610

D11 JP-A-2002-178428

D12 Patent Abstracts of Japan, machine translation into English of JP-A-2002-178428

D12a English manual translation of D11

III. In its reply to the appeal, the respondent (patent proprietor) requested dismissal of the appeal and in addition filed auxiliary requests I to V.

IV. In a communication annexed to the summons to oral proceedings, the Board stated its preliminary opinion.

V. In its reply of 10 May 2017, the respondent maintained its previous requests and submitted additional auxiliary requests IIa, IIb and IIc. Further, the respondent filed:

E1 <http://www.rotarydies.com/products/anvil-rollers>

E2 <http://www.rotometrics.com/our-products/anvils/base-anvils>

E3 <http://www.everwear.com/anvil-rolls-solid>

E4 <http://www.wilsonmfg.com/anvil-rolls.html>

E5 <http://www.lederle.com/wp-content/uploads/2016/02/Lederle-EBook-1.pdf>

VI. Oral proceedings were held before the Board on 11 July 2017.

The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent requested that the appeal be dismissed (main request), auxiliarily that the patent be maintained in amended form on the basis of one of auxiliary requests I and II as filed with letter dated 6 August 2013, or on the basis of one of auxiliary requests IIa, IIb and IIc as filed with letter dated 10 May 2017, or on the basis of auxiliary request IID as filed during the oral proceedings of 11 July 2017, or on the basis of one of auxiliary requests III to V as filed with letter dated 6 August 2013.

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

"A method of manufacturing a disposable absorbent article having an outer cover (2), an absorbent member (3) attached to the skin facing side of said outer cover, and elastic members (18,19) are attached from along leg-side edges (2a) of said outer cover surrounding the wearer's left and right legs to a crotch zone (8a) of said outer cover, said absorbent member including an absorber (31), said method comprising the steps of:
a) (S1) attaching said elastic members continuously to a continuous material (42) while transporting said continuous material in its longitudinal direction, said continuous material being a series of material for forming said outer cover and extending continuously in a lateral direction of said absorbent article,

- b) (S2) softening at least a portion of said continuous material by applying blades of a cutter to said portion of said continuous material to be said crotch zone of said outer cover, and part of said elastic member positioned in the portion is cut short to be weakened, thereby a plurality of almost slit-like holes (41) extending through said continuous material are provided in said portion and part of said elastic members positioned in the portion;
- c) (S3) attaching said absorbent member to said continuous material; and
- d) (S7) cutting said continuous material, with said absorbent member attached thereto, into products."

Claim 1 of auxiliary request I further includes the following feature in step b):

"wherein each portion to be the crotch zone of the continuous material is passed between a blade roller (46) serving as said cutter and an anvil roller (47), creating a plurality of said almost slit-like holes in each portion to be the crotch zone of the continuous material".

During the oral proceedings, the respondent was made aware of an obviously erroneous wording concerning the term "creating a plurality of said almost slit-like holes" which can only be understood as being meant to read "creating said plurality of said almost slit-like holes". The respondent agreed thereto and argued that all arguments with regard to auxiliary request I should be understood to be related to such corrected term.

Claim 1 of auxiliary request II includes, in addition to the features of claim 1 of auxiliary request I, the

following feature in the introductory part of the claim:

"said outer cover (2) being of a single-piece design integrally formed of a front waist region (6), a crotch region (8) and a rear waist region (7)".

Claim 1 of auxiliary requests IIa and IIb each differs from claim 1 of the main request and of claim 1 of auxiliary request I respectively, in that the following feature is amended (added wording in italics):

"(S1) attaching said elastic members continuously to a continuous material (42) *windingly along lines to be the leg-side edges and each portion to be the crotch zone of the continuous material (42)* while transporting said continuous material in its longitudinal direction,..."

Claim 1 of auxiliary request IIc differs from claim 1 of the auxiliary request IIb in that, additionally, the outer cover is further defined as follows:

"said outer cover (2) being of a single-piece design integrally formed of a front waist region (6), a crotch region (8) and a rear wairs [*sic*] region (7),".

Claim 1 of auxiliary request IID differs from claim 1 of auxiliary request IIb in that it additionally includes, in step (S2), the features of

"the blade roller being provided with a plurality of said blades on its outer edge and said blades are applied to the outer-cover continuous material with the passage of the continuous material," and

"wherein the blades of the blade roller are arranged to perpendicularly cross the longitudinal direction, such that the holes created by the blades extend like slits in the direction perpendicular to the longitudinal direction".

Claim 1 of auxiliary request III differs from claim 1 of the main request in that the following feature is included in step 2:

"wherein the cutter is a blade roller (46) having a plurality of blades (46a) provided along its entire circumference".

In addition to the amendment made in claim 1 of auxiliary request III, claim 1 of auxiliary request IV includes the following feature in step S2:

"wherein each portion to be the crotch zone of the continuous material is passed between a blade roller (46) serving as said cutter and an anvil roller (47), creating a plurality of said almost slit-like holes in each portion to be the crotch zone of the continuous material".

Claim 1 of auxiliary request V is the same as claim 1 of the main request amended to include the features added in claim 1 according to auxiliary requests II and IV.

VIII. The arguments of the appellant which are relevant for the decision may be summarised as follows:

The subject-matter of claim 1 was not new over D10. In D10 the cutting method was not further disclosed but reference was made in this regard to D11/D12. D12/D12a

indicated clearly that through-holes could be formed in the laminated element when cutting the elastic member (see claim 1) and a linear shaped cutting edge was shown in Figure 6c. Thus, the disclosure in D10 including the reference to D12, gave a clear and unambiguous disclosure of using a cutting blade which provided slit-like holes.

When starting from the disclosure in D10, and considering the cutting method as the distinguishing feature, the subject-matter of claim 1 did not involve an inventive step. The skilled person already had the pointer in D10 to consider the disclosure in D12 with regard to the cutting step. When selecting any one of the three cutting tips, no inventive step was necessary. When desiring to improve ventilation in the crotch area, the selection of cutting not only the elastic members but also the laminate itself was obvious especially as this characteristic was also disclosed as a result of the cutting method in D12.

E1 to E5 should not be admitted. Their public availability at the priority date was not documented. They were not evidence of the absence of structured surfaces on anvil rolls; to the contrary, they even referred to stepped anvil rolls. Therefore they were also not relevant with respect to supporting the respondent's case.

Auxiliary request I should not be admitted, the added features were disclosed interrelated to other features of the manufacturing method, such as a plurality of blades on its outer edge and the arrangement of the blade with respect to the transport direction of the material and further features set out for the embodiment of the manufacturing method disclosed in

paragraphs 33 to 44 and described with reference to Figures 3 to 5. Accordingly, the requirement of Article 123(2) EPC was not met.

Auxiliary requests IIa, IIb, IIc should not be admitted. Amended claim 1 of all these requests did not meet the requirements of Article 123(2) EPC or of Article 84 EPC.

Auxiliary request IID had been filed very late. It appeared to be based on the wording of auxiliary request I. In view of auxiliary requests IIa to IIc which had been discussed in the meantime, the request was not convergent. Additionally, it included amendments which could not have been anticipated, such as for example the deletion of the term "almost" in relation to the "slit-like holes"; it was unclear what meaning this deletion introduced. Also, the requirement of Article 123(2) EPC was still not met since the embodiment shown in Figure 4 included a blade roll having the blades distributed, for example, uniformly over the complete roll and arranged in a specific direction with regard to the material. Accordingly, auxiliary request IID should not be admitted into the proceedings.

None of auxiliary requests III to V met the requirement of Article 123(2) EPC. In particular these requests were also not convergent compared to the previously discussed requests and should not be admitted.

IX. The arguments of the respondent which are relevant for the decision may be summarised as follows:

The subject-matter of claim 1 was new over D10. In D10 the cutting method was not further disclosed but

reference was made to D11/D12. In these documents, various cutting methods were disclosed and so there was no clear and unambiguous reference to, on the one hand, a cut extending through the complete laminate and, on the other hand, the use of a cutting blade providing an almost slit-like hole. Additionally, it should be taken into account that certain application of the adhesive which was disclosed in D10 would also be possible in an intermittent manner and hence, there was no clear and unambiguous disclosure in D10 of attaching the elastic members continuously to a continuous material.

When starting from D10, the claimed method also involved an inventive step. The objective problem starting from D10 could not simply be regarded as being to provide an article having improved breathability. It also related to obtaining improved flexibility and comfort in the crotch zone of the article. Cutting through the complete laminate provided weakened contractive forces and thus resulted in higher flexibility of the article combined with improved comfort.

E1 to E5 should be admitted. They were filed in order to explain the cutting step further, in particular the generally plain characteristic of anvil rolls which should be considered as implicitly present. The feature of the anvil roll was added to claim 1 in auxiliary request I. This characteristic was relevant since D12 did not disclose an anvil roller having a plain and smooth surface.

Auxiliary request I should be admitted, since the added features related only to step S2 as disclosed in paragraphs 37 to 39 and as shown in Figure 4. The amendment did not concern a picking and choosing; the

description and the Figure 4 showed that each feature had its own special purpose and independent function. The same applied for the blade roll and the anvil roll. The skilled person understood that the other features of the further steps of the manufacturing method were not related thereto but had independent and discrete effects.

Auxiliary requests IIa, IIb, IIc should be admitted. These requests were further limited and included all features which were relevant for the course of the elastic members (step S1). The word "windingly" was clearly understood by the skilled person when considering the patent. The requests were filed in response to the communication of the Board.

Auxiliary request IID should be admitted. The term "slit-like" was clear and defined the holes extended like slits rather than almost like slits. All previously raised objections were remedied in claim 1 of this request in that all relevant features of the embodiment shown in Figures 3 to 5 and set out in paragraphs 37/39 with regard to step S2 were included. There was no written disclosure in the patent in suit that the blades had to be uniformly distributed, and such distribution was only schematically shown in Figure 4. Thus, it was not necessary to insert this feature into claim 1. The other manufacturing steps were not concerned by, or related to, the amendment.

Auxiliary requests III to V should be admitted. The amendment in claim 1 of these auxiliary requests was mainly based on the embodiment shown in Figure 4 of the application as filed concerning the cutter being a blade roller having a plurality of blades provided along the entire circumference. Accordingly, the

requirement of Article 123(2) was met. Auxiliary request IV included a claim 1 being further amended in the same way as claim 1 according to auxiliary request I. Auxiliary request V included a claim 1 corresponding to a combination of claim 1 according to auxiliary requests II and III respectively. The arguments given with regard to these requests applied equally.

Reasons for the Decision

1. Main Request - Novelty / D10/D12/D12a

1.1 D10 discloses (see Figure 12) a method for manufacturing a disposable absorbent article. Elastic members crossing the intermediate zone (crotch zone) are continuously applied to the continuous lower nonwoven fabric layer and they are fixed by homogeneously applied hot-melt adhesive in certain shape (paragraph 83) and covered by a continuous upper layer nonwoven fabric. The laminated sheet is passed between an emboss heat roll having a plurality of so-called "kicks" arrayed on its surface and the roll confronting the emboss heat roll, so that the curved elastic members are cut. The emboss pattern includes staggered lines of linear kicks (Figure 14a). Concerning further details of the cutting method, specific reference is made in paragraph 89 to the

methods disclosed in D11/D12 (see D12a: English translation).

1.2 D12a concerns a method for producing an elastic sheet being a laminated element and discloses in paragraph 38 with reference to Figure 4, that the cutting is performed so as to penetrate the laminated element, whereby not only is the elastic member cut but holes are formed in the laminate. In paragraph 39 and with reference to Figure 5, the options are indicated for forming the holes as through-holes or as depressed holes. Concerning the cutting action, the description in paragraphs 20/21 refers to cutting by a roll comprising pin-shaped cutting projections. In Figure 6, three shapes of the cutting projections are shown exemplarily: a circular conical pin shape, a polygonal pin shape and a linear projection shape comprising a linear cutting edge at the tip end (paragraph 41). The latter cutting edges represent blades of a cutter which can provide slit-like holes.

1.3 Accordingly, the skilled person starting from D10 and including the disclosure of D11/D12 with respect to the details of the cutting action has to select

- (a) the option of cutting the complete laminate (i.e. providing through-holes) and
- (b) the further option of selecting the linear cutting edges of the cutting projections shown in Figure 6C of D12, in order to obtain through-holes which are "almost slit-like".

The specific selection of these two options in combination is not disclosed. Thus, the subject-matter of claim 1 is not clearly and unambiguously disclosed in D10 when considering the content of D12.

Accordingly, the subject-matter of claim 1 is novel (Article 54 EPC).

- 1.4 The respondent also argued that a further feature was not disclosed (in the combination of D10 with the included content of D12) related to the curtain application of adhesive disclosed therein, which according to the respondent could have been performed in an intermittent manner and, hence, D10 did not mandatorily disclose the attachment of the elastic members continuously to a continuous material. Whilst it is accepted that this might be possible, this is a purely theoretical possibility. In practice, there is no doubt that such curtain method for application of adhesive will only be chosen by a skilled person when a continuous application is desired, meaningful and possible in the scope of the designed process. Moreover, the term "homogeneous application" used in this context in paragraph 83 of D10 can only be interpreted as referring to a continuous application. Accordingly, this feature is not considered as a further distinguishing feature of claim 1 over D10.
- 1.5 The respondent further argued that according to D10/D12, the shape of the holes would be rectangular or of rhombic shape but not almost slit-like. These holes were obtained by kicks of a certain shape on an emboss heat roll such that even longitudinally-shaped kicks would not be considered as blades of a cutter for providing almost slit-like holes. However, the Board finds that the term "almost slit-like holes" is indefinite and can only be understood as concerning a cut or hole of a more or less elongate shape. This term is certainly not limited to a hole without an extension in the width direction and thus applies to holes made by the longitudinally shaped kicks on an emboss heat roll. These kicks can also be considered to be blades of a cutter since a blade also has no predefined width

at its tip. Thus, this feature cannot be considered as a distinguishing feature with respect to the longitudinally-shaped kicks shown in Figure 6c of D12. Although the respondent argued that kicks would not be blades, it failed to identify what difference was present structurally in this regard.

2. *Main request - Inventive step*

2.1 D10 may be taken as representing the closest prior art for the consideration of inventive step. The subject-matter of claim 1 differs from the disclosure therein (as set out already above) in that the features of:
(1) applying blades of a cutter resulting in slit-like holes; and

(2) holes extending through the elastics and the laminate;

are not clearly and unambiguously disclosed in combination in D10/D12.

2.2 The objective technical problem starting from D10 can be regarded as the provision of an article having improved breathability.

2.3 A problem related to flexibility such as suggested by the respondent does not form part of the objective technical problem in that there is no disclosure in the patent in suit that flexibility is enhanced. The respondent's argument that the cuts provided weakened but specific contractive forces in the crotch portion to open the slits would only apply if the elastic members were attached under tension, and under the provision that a sufficient amount of slit-like holes would be made. However, no such features are defined in the claim and these features are not implicit.

- 2.4 When desiring an improved breathability of the article, starting from D10, the skilled person would immediately select the option from D12 of cutting not only the elastic members but the whole laminate for thereby gaining the benefit of improved breathability in the area of the crotch portion of the article, since D12 (see e.g. paragraphs 11, 19) states that ventilation is improved when holes are formed by means of the cutting projections.
- 2.5 This being the case, the skilled person is left with the task of selecting a suitable cutting projection shape. When selecting one of the three cutting edges referred to in Figure 6 of D12, there is no inventive step necessary. The cutting edges being of longitudinal extension on the blade roller represent simply one of three obvious options, and they represent and act as cutting blades. There is no particular advantage or benefit referred to when applying "slits" (e.g. holes having a longitudinal dimension greater than a lateral dimension) versus differently designed openings. Accordingly, any of these cutting edges would be applied to solve the problem of improved ventilation of the article.
- 2.6 Therefore, the skilled person would consider the advantage of improved ventilation and would replace the cutting edges of the emboss roll in D10 by one of the cutting edges suggested in D12, accordingly also by the cutting edges having a longitudinal extension, and thus arrive at the subject-matter of claim 1 without the exercise of inventive skill. Consequently, the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC).

2.7 Accordingly, there is no necessity to consider the arguments with regard to the further objections made by the appellant regarding lack of novelty or lack of inventive step.

3. *Admittance of E1 to E5*

3.1 Under Article 114(2) EPC, the department of first instance as well as the Boards of Appeal have a discretion to admit late-filed submissions and documents. 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 particular, the relevance of a late-filed document as well as the question why it had not been earlier submitted should normally be factors which are taken into account when considering how to exercise this discretion.

3.2 E1 to E5 were filed by the respondent in preparation for the oral proceedings before the Board in order to support its argument that a skilled person understood that anvil rolls usually had a plain and smooth surface. No evidence concerning the date of publication of these documents was submitted. E1 to E3 and E5 do not include any reference to a (publication) date. E4 contains, in its last line on the bottom, a reference to a copyright for Wilson Manufacturing Company in 2015. Hence, there is no evidence for any of these documents being published and/or being publicly available before the priority date of the patent in suit. Anyway, the documents provide no evidence that an anvil roll should be considered to be a plain roll. In particular, it was noted that e.g. E3 included in addition to references to smooth anvil rolls also

references to perforated anvils, patterned anvils, splicer anvils, anvil rolls-inserts and other variations concerning anvil rolls. Accordingly, these documents cannot be considered to provide the information that solely smooth and plain anvil rolls were sold by the companies selling the specific products advertised in these documents or that only such plain and smooth anvil rolls should exist, such that *prima facie* relevance of the documents is not apparent to the Board.

- 3.3 Concerning the respondent's argument that the anvil rolls shown in these documents had anyway not changed for many years, no evidence was provided. Thus, since it cannot be established - at the very least - that these documents represent information available to a skilled person prior to the priority date of the patent, or that anvil rolls would be understood to have a smooth plain surface, the Board exercised its discretion not to admit these documents into the proceedings.

4. *Auxiliary request I*

- 4.1 Claim 1 of auxiliary request I includes the following feature in step b):

"wherein each portion to be the crotch zone of the continuous material is passed between a blade roller (46) serving as said cutter and an anvil roller (47), creating a (said) plurality of said almost slit-like holes in each portion to be the crotch zone of the continuous material".

- 4.2 As basis for the added feature, page 9, lines 5 to 14 of the application as filed (corresponding to paragraph 37 of the A-publication) was indicated.

- 4.3 This paragraph reads:
"In the next step S2, each portion to be the crotch zone 8a of the outer-cover continuous material 42 is subjected to a softening process. The softening process is carried out by passing each portion to be the crotch zone 8a of the outer cover continuous material 42 between a blade roller 46 serving as a cutter and an anvil roller 47, as shown in Fig. 4. The blade roller 46 is provided with a plurality of blades 46a on its outer edge, and the blades 46a are applied to the outer-cover continuous material 42. As a result, as shown in Figures 5A and 5B, the plurality of slit-like holes 41 are created in each portion (region surrounded by two-dot chain line in Fig. 3) to be the crotch zone of the outer-cover continuous material 42, so that the portion is softened."
- 4.4 This paragraph cannot be understood by the Board in a way that it can be read independently of the further steps and features disclosed in the preceding or following paragraphs or in the cited Figures. This is apparent from the fact that the paragraph starts with the wording: "In the next step S2 ... ". In other words, the step of the softening process described in this paragraph is the one which follows subsequent to step S1, and both steps, S1 and S2 represent steps in a consecutive line of steps S1 to S7 shown in Figures 3 to 5. There is no unambiguous disclosure that one step in the process can be separated from and used independently of the other steps.
- 4.5 The respondent was of the view that the added wording could be introduced independently of the further features and steps as the issue under consideration was only to further characterise the application of the

blade roller (with an anvil roller) in order to obtain the desired result (the softened portion) within the softening step.

4.6 However, it is evident from the cited paragraph, that it refers directly and unambiguously to the sequence of particular method steps disclosed in paragraphs 33 to 44 and shown in Figures 3 to 5. This is not only derivable from the references to these Figures but also by the sequence of the steps which are to be carried out in the order of S1 to S7 according to paragraph 35. Still further, paragraph 37 refers to the plurality of blades provided on the outer edge of the blade roller and such a roller is shown in Figure 4. From this Figure 4, as well as from Figures 3, 5A and 5B - it is evident that the blades of the blade roller are arranged to perpendicularly cross the transport direction B1 in order to obtain the desired result. This transport direction and the direction in which the holes created by the blades are also disclosed in paragraph 39 with regard to the softening step and are consistent with the cited Figures. Hence, the amendment omits related features at least of the arrangement of the blades and transport direction although the softening step is disclosed only including these features.

4.7 As a consequence, the characteristics used to define the creation of a "plurality of said almost slit-like holes in each portion to be the crotch zone of the continuous material" in the method of claim 1 represent an inadmissible intermediate generalisation of the features disclosed in combination in the application as filed, for which there is also no other basis. Consequently the subject-matter of claim 1 extends beyond the content of the application as originally

filed contrary to Article 123(2) EPC. Since auxiliary request I is already not allowable for this reason, it is not necessary to take into account the further objections made by the appellant in regard to Article 56 EPC against this request.

5. *Auxiliary request II*

5.1 Claim 1 of auxiliary request II includes the same added feature in step b) as claim 1 of auxiliary request I. Accordingly, the arguments set out above concerning auxiliary request I apply equally. The further amendment "said outer cover (2) being of a single-piece design integrally formed of a front waist region (6), a crotch region (8) and a rear waist region (7)" concerns another feature and does not overcome the objection set out above.

5.2 Consequently, also the subject-matter of claim 1 of auxiliary request II extends beyond the content of the application as originally filed contrary to Article 123(2) EPC.

6. *Auxiliary requests IIa, IIb, IIc*

6.1 These requests were filed in reply to the communication of the Board. According to Article 13(1) 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 fulfil the requirement of procedural economy, a request filed at such a late stage of proceedings should normally be *prima facie* clearly allowable at least in the sense that it overcomes the objections raised and does not give rise to new objections, which, however, is not the case for claim 1 of these requests, as set out below.

6.2 Claims 1 of auxiliary requests IIa and IIb differ from claim 1 of the main request and of claim 1 of auxiliary request I respectively, in that the following feature has been amended (added wording in italics):

"(S1) attaching said elastic members continuously to a continuous material (42) *windingly along lines to be the leg-side edges and each portion to be the crotch zone of the continuous material (42)* while transporting said continuous material in its longitudinal direction,..."

Claim 1 of auxiliary requests IIc differs from claim 1 of auxiliary request IIb additionally in that the outer cover is further defined.

6.3 As a basis for this amendment in step S1, the appellant referred to page 8, line 18 to page 9, line 4 of the application as filed. The amended wording is part of the paragraph which begins with the wording "As shown in Fig. 3, steps S1 to S7 are carried out while transporting an outer-cover continuous material 42 for forming the outer cover 2 and the like in a transport direction of the outer-cover continuous material 42. In step S1, ... ". Hence, this paragraph is, again, one of the series of paragraphs referring to the embodiment of the method of manufacturing the absorbent article described with reference to steps S1 to S7 and Figures 3 to 5. When amending claim 1 by the addition of one of these features, the remaining features linked to this embodiment have been omitted although the embodiment of the method of manufacturing is disclosed only including these features.

6.4 As a consequence, the characteristics used to define the attachment of the elastic members in the method of claim 1 represent an inadmissible intermediate

generalisation of the features disclosed in combination in the application as filed for which there is no basis. Consequently the subject-matter of claim 1 extends beyond the content of the application as originally filed, contrary to Article 123(2) EPC.

6.5 The amended features in claim 1 of auxiliary request IIa, IIb or IIc do not overcome the objection set out under point 4 above with regard to claim 1 of auxiliary request I. The subject-matter of claim 1 thus is at least not *prima facie* allowable.

6.6 Additionally, the amended wording in claim 1 of auxiliary requests IIa, IIb or IIc includes the word "windingly" which leads to an objection concerning lack of clarity. It is not clear how this term is to be understood in relation to the position being "along lines to be the leg-sides and each portion to be the crotch zone of the continuous material" since there are various ways of attaching the elastic members which might possibly be understood as corresponding to the definition in the claim, all depending on how the term "windingly" is to be understood. For example it could mean a type of zig-zag or spiral-like layout following lines later to be side edges. Although the respondent argued that the term would be understood in relation to the specification, the Board cannot accept this. First, there is no definition in the specification of what "windingly" is supposed to mean, and second, the term is anyway only used in the description in relation to Figures which are themselves entirely schematic so that the term "windingly" cannot assume any clear meaning from there either. Accordingly, the requirement of Article 84 EPC is at least *prima facie* not met and the subject-matter of claim 1 thus is not *prima facie* allowable also for this reason.

6.7 Hence, the Board exercised its discretion under Article 13(1) RPBA not to admit these requests into the proceedings.

7. *Auxiliary request II d*

7.1 This request was filed during the oral proceedings before the Board. Accordingly, the Board also needed to apply its discretion under of Article 13(1) RPBA as set out under point 6.1 above.

7.2 Claim 1 additionally includes the features "the blade roller being provided with a plurality of said blades on its outer edge and said blades are applied to the outer-cover continuous material with the passage of the continuous material," and "wherein the blades of the blade roller are arranged to perpendicularly cross the longitudinal direction, such that the holes created by the blades extend like slits in the direction perpendicular to the longitudinal direction".

7.3 The respondent explained that this amendment was made with the intention of overcoming the objections set out above in relation to auxiliary requests IIa to IIc.

7.4 The amendment however does not fulfil the requirement of Article 123(2) EPC. As discussed above in relation to auxiliary request I the method step S2 is embedded in a sequential arrangement of steps S1 to S7. Nevertheless, there are still omitted steps as step S1 (concerning sandwiching the elastic member between sheet members), and steps S4 to S6 (concerning the formation of the leg holes, the folding step and the bonding step for formation of the side bonded parts)

contrary to the requirement of Article 123(2) EPC. It is *prima facie* not clear where an unambiguous basis exists for including only these features when considering the disclosure of a sequence of method steps in the manufacture of an absorbent article as described in paragraphs 34 to 44 with reference to Figures 3 to 5, all of which are related and in context of the method disclosed. The respondent's argument that it had included the necessary and essential steps can in no way be seen by the Board to provide, at least *prima facie*, a direct and unambiguous basis for the inclusion of only certain steps with the omission of others from the entirety of methods steps disclosed in combination.

7.5 Accordingly, the requirement of Article 123(2) EPC is at least *prima facie* not met. Hence, the Board exercised its discretion not to admit auxiliary request IIId into the proceedings.

8. *Auxiliary Requests III to V*

8.1 Claim 1 of auxiliary request III includes the feature "wherein the cutter is a blade roller (46) having a plurality of blades (46a) provided along its entire circumference".

This feature is shown as one of the features in Figure 4 of the application as filed. As already discussed in relation to the preceding requests II and IIA to IIId (even if it were to be considered that the schematic drawing shown in Figure 4 could be taken as a disclosure of this feature), it is part of the disclosure of a manufacturing method including all of method steps S1 to S7 and concerns the application of this particular method. Several steps thereof being partially and/or completely omitted, the requirement of

Article 123(2) EPC is not met. Accordingly, the subject-matter of claim 1 thus is not *prima facie* allowable.

8.2 The amendments made in auxiliary requests IV and V also at least *prima facie* do not overcome this objection for the same reasons as apply to auxiliary request III.

8.3 Furthermore, the sequence of the requests was changed during the proceedings in that auxiliary requests IIa to IIId were introduced in front of auxiliary requests III to V. Although the numbering of the requests was not altered for purposes of simplicity, the sequence of auxiliary requests was changed markedly thus involving an amendment of the case which the Board had to deal with. In particular there was no convergency of the requests (features in preceding requests IIa to IIId having been removed in these requests). Such a change in the course of the proceedings did not meet the need for procedural economy as set out in Article 13(1) RPBA.

8.4 For the above reasons, the Board exercised its discretion not to admit auxiliary requests III to V 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