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Datasheet for the decision of 15 December 2022

Case Number: T 2399/18 - 3.2.06

Application Number: 10832845.1

Publication Number: 2506817

IPC: A61F13/496, A61F13/49

Language of the proceedings: EN

Title of invention:
DISPOSABLE WEARING ARTICLE

Patent Proprietor:
Unicharm Corporation

Opponents:
Essity Hygiene and Health Aktiebolag
The Procter & Gamble Company

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2)
RPBA Art. 12(4)

Keyword:
Grounds for opposition - extension of subject-matter (yes)
Auxiliary requests 1 to 5 - amendments - added subject-matter (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2399/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 15 December 2022

Appellant: (Patent Proprietor)	Unicharm Corporation 182 Shimobun Kinsei-cho Shikokuchuo-shi Ehime 799-0111 (JP)
Representative:	Staeger & Sperling Partnerschaftsgesellschaft mbB Sonnenstraße 19 80331 München (DE)
Appellant: (Opponent 2)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, Ohio 45202 (US)
Representative:	Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Party as of right: (Opponent 1)	Essity Hygiene and Health Aktiebolag 405 03 Göteborg (SE)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 24 July 2018 concerning maintenance of the European Patent No. 2506817 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	C. Almberg

Summary of Facts and Submissions

I. In its interlocutory decision the opposition division found that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 2 506 817 met the requirements of the EPC.

II. Appeals were filed by the proprietor and opponent 2. As two parties have appealed, the parties will be referred to in the following as "proprietor", "opponent 1" and "opponent 2" (or both together as "opponents").

III. The proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or that the patent be maintained on the basis of one of the auxiliary requests 1, 2, 2A, 3, 3A, 4, 4A and 5 filed with the statement of grounds of appeal, where auxiliary request 5 was identical to the amended text of the patent found allowable by the opposition division. The proprietor further requested that opponent 2's appeal be rejected as inadmissible.

IV. Opponent 2 requested that the decision under appeal be set aside and the patent be revoked. In the alternative, it requested that the proprietor's appeal be dismissed.

V. Opponent 1 requested that the proprietor's appeal be dismissed.

VI. The Board issued a summons to oral proceedings and a subsequent communication in which it gave its preliminary opinion that the ground for opposition under Article 100(c) EPC was considered to be

prejudicial to maintenance of the patent as granted and that claim 1 of each of auxiliary requests 1-5 respectively did not overcome the objections under Article 100(c) EPC against the main request.

VII. After the issuance of a summons, and a subsequent communication including a preliminary opinion, oral proceedings were held before the Board on 15 December 2022, during which the proprietor withdrew its request for rejection of opponent 2's appeal as inadmissible.

The requests of the parties at the end of the oral proceedings were as follows:

- the proprietor requested that the appealed decision be set aside and the patent be maintained based on the claims of the main request or, in the alternative, one of auxiliary requests 1 to 4A or, in the further alternative, that opponent 2's appeal be dismissed,

- opponent 2 requested that the decision under appeal be set aside and the patent be revoked,

- opponent 1 requested that the proprietor's appeal be dismissed.

VIII. Claim 1 of the main request reads as follows:
"A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions

and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,

said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;
said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (25) of said rear waist main section (18)."

IX. The wording of the auxiliary requests is annexed at the end of the decision.

X. The proprietor's arguments relevant to the decision may be summarised as follows:

Main request and auxiliary requests 1-5 - Articles 100(c) and 123(2) EPC

Paragraphs [0014] and [0017] and the Figures of the published application provided a basis for the feature "an upper area lying adjacent to said waist-opening".

XI. The opponents' arguments relevant to the decision may be summarised as follows:

Main request - Article 100(c) EPC

Paragraphs [0014] and [0017] of the published application did not provide a basis for the feature "an upper area lying adjacent to said waist-opening" and instead disclosed that the upper area lay on the side of the outer end of the rear waist panel, which was not the same as lying adjacent to the waist opening.

Auxiliary requests 1-5 - Article 123(2) EPC

No auxiliary request overcomes the objection under Article 100(c) EPC mentioned above for the main request, and auxiliary requests 1 to 4A should anyway be excluded from the proceedings under Article 12(4) RPBA 2017.

Reasons for the Decision

1. Main request - Article 100(c) EPC

1.1 Claim 1 as granted was amended during examination proceedings to include *inter alia* the following feature:

"said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region"

1.2 Paragraph [0017] of the published application describes that the upper area (of the rear waist main section) is "lying on the side of the outer end of the rear waist panel", which is not the same as lying adjacent to the "waist opening", as defined in claim 1 of the main request.

Further, paragraph [0014] describes that the rear waist panel and the front waist panel are attached through seam spots arranged intermittently in the longitudinal direction forming a waist opening and a pair of leg portions.

1.3 There is thus only a disclosure for the upper area of the rear waist section lying on the side of the outer end of the rear waist panel. The expression “lying on the side of the outer end of the rear waist panel” implies a rather general location (i.e. somewhere unspecific on the side) whereas the expression “lying adjacent to the waist opening” implies a more specific relative position and distance.

Thus, as argued for example by opponent 2, the expression in paragraph [0017] does not exclude that the rear waist panel comprises further sections other than the rear waist main section and the buttocks covering section, including further sections adjacent to the waist opening. It cannot thus be inferred that an upper area “lying on the side of the outer end of the rear waist panel” (as disclosed in paragraph [0017]) is necessarily “adjacent to the waist opening” as defined in claim 1.

1.4 The proprietor argued that the amended feature was a direct definition of the arrangement of the upper and the lower area and that the Figures also provided a

basis for this amendment. It also argued that it was the examining division that requested this amendment to overcome a clarity problem.

These arguments are not convincing. Whilst Figures 1, 2, 5 and 6 show a rear waist panel 18 having an upper area 31 that a skilled person might indeed consider as adjacent to the waist opening, they in fact show a far more specific arrangement, wherein, for example, the rear waist panel 17 as well as the upper and lower areas 31 and 32 respectively have a rectangular shape (as described in e.g. paragraph [0013]) and the lower area 32 is smaller than the upper area 31 (as also described in paragraph [0017]). The Board therefore sees no reason why a skilled person would directly and unambiguously derive from the Figures specifically that the rear waist main section has an upper area lying adjacent to said waist-opening and omit the other features regarding the arrangement of the lower and upper area such as their their shapes and different sizes.

As to the suggestion that the proposal for claim amendment was "requested and accepted" by the examining division, the Board notes that under Article 113(2) EPC the text must be submitted, or agreed to, by the applicant, i.e. the (now) patent proprietor is exclusively responsible for determining the text to be examined and decided upon. In addition, Article 123(2) EPC does not foresee any *lex specialis* for amendments proposed by the examining division. It is thus irrelevant for the considerations of the Board whether the amendment was proposed by the examining division or by the applicant.

1.5 The ground for opposition under Article 100(c) EPC therefore prejudices maintenance of the patent as granted (main request).

2. Auxiliary requests 1-5 - Article 123(2) EPC

2.1 Leaving aside the question of possible exclusion of the auxiliary requests 1 to 4A from the proceedings under Article 12(4) RPBA 2017, claim 1 of each of the auxiliary requests 1 to 5 also comprises the amended feature discussed above under item 1, found to extend the subject-matter of claim 1 of the main request beyond the content of the application as filed.

2.2 The Board stated in items 5.4 and 6.2 of its preliminary opinion that it did not consider that the amendments made to claim 1 of any of the auxiliary requests 1-5 overcame the objections regarding Article 100(c) EPC made against the main request.

2.3 None of the features added to claim 1 of the auxiliary requests 1-5 changes or further specifies the feature that the upper area of the rear waist main section lies adjacent to the waist-opening. In fact, none of the amendments concerns the upper area of the rear waist main section at all. The proprietor also did not argue that they did. The amendments as such are merely directed towards other features visible in the Figures.

2.4 Since no further arguments than the ones made in regard to the main request were made by the proprietor in reply to the Board's preliminary opinion, nor during the oral proceedings on this matter, the Board sees no reason to alter its preliminary opinion in this regard, and thus confirms the same herewith.

2.5 Therefore, none of the amendments made to auxiliary requests 1 to 5 overcomes the deficiency in the main request such that the subject-matter of claim 1 of each of auxiliary requests 1 to 5 does not fulfil the requirement of Article 123(2) EPC. The auxiliary requests 1 to 5 are therefore also not allowable.

3. Absent any text which meets the requirements of the EPC, the European patent must be revoked.

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:

B. Brückner M. Harrison

Decision electronically authenticated

Claim 1 of auxiliary request 1

Auxiliary Request 1

1. A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (25) of said rear waist main section (18),

wherein said buttocks-covering section is divided into an upper portion (19U) lying adjacent to said rear waist main section and a lower portion (19D) lying adjacent to said crotch region wherein a tensile stress per unit width dimension at least in said upper portion is lower than a tensile stress per unit width dimension in said lower area of said rear waist main section,
wherein:
said front waist region includes a plurality of elastic elements (28, 29) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said rear waist region includes a plurality of elastic elements (35, 36) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said buttocks-covering section includes a plurality of elastic elements (37) each in a form of a string or a strand associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction; and
a spacing among said elastic elements associated with said buttocks-covering section is larger than a spacing among said elastic elements associated with said front and rear waist regions, and wherein
said buttocks-covering section includes, between said upper portion and said lower portion, a middle portion (19M) provided with none of said elastic elements associated therewith.

Auxiliary request 2

Auxiliary Request 2

1. A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

side edges (16c,16d) of the front waist region (13) are put flat together with and joined to respective side edges (17c,17d) of the rear waist main section (18) at seams spots arranged intermittently in the longitudinal direction (Y) whereupon the waist-opening (22) and the pair of leg-opening (23) are formed;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the

transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18).

Auxiliary request 2A

Auxiliary Request 2A

1. A disposable diaper (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

side edges (16c,16d) of the front waist region (13) are put flat together with and joined to respective side edges (17c,17d) of the rear waist main section (18) at seams spots arranged intermittently in the longitudinal direction (Y) whereupon the waist-opening (22) and the pair of leg-opening (23) are formed;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18).

Auxiliary request 3

Auxiliary Request 3

1. A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

side edges (16c,16d) of the front waist region (13) are put flat together with and joined to respective side edges (17c,17d) of the rear waist main section (18) at seams spots arranged intermittently in the longitudinal direction (Y) whereupon the waist-opening (22) and the pair of leg-opening (23) are formed;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18), and

said buttocks-covering section (19) is divided into an upper portion (19U) lying adjacent to said rear waist main section (18) and a lower portion (19D) lying adjacent to said crotch region (15) and a middle portion (19M) lying between the upper portion (19U) and the lower portion (19D); and

said tensile stress per unit width dimension in said lower area (25) of the said front waist region (13) = said tensile stress per unit width dimension in said lower area (32) of said rear waist main section(18) + said tensile stress per unit width dimension in said upper portion (19U) of said buttocks-covering section (19).

Auxiliary request 3a

Auxiliary Request 3A

1. A disposable diaper (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

side edges (16c,16d) of the front waist region (13) are put flat together with and joined to respective side edges (17c,17d) of the rear waist main section (18) at seams spots arranged intermittently in the longitudinal direction (Y) whereupon the waist-opening (22) and the pair of leg-opening (23) are formed;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18), and

said buttocks-covering section (19) is divided into an upper portion (19U) lying adjacent to said rear waist main section (18) and a lower portion (19D) lying adjacent to said crotch region (15) and a middle portion (19M) lying between the upper portion (19U) and the lower portion (19D); and

said tensile stress per unit width dimension in said lower area (25) of the said front waist region (13) = said tensile stress per unit width dimension in said lower area (32) of said rear waist main section(18) + said tensile stress per unit width dimension in said upper portion (19U) of said buttocks-covering section (19).

Auxiliary request 4

Auxiliary Request 4

1. A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said

crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18),

wherein said buttocks-covering section is divided into an upper portion (19U) lying adjacent to said rear waist main section and a lower portion (19D) lying adjacent to said crotch region wherein a tensile stress per unit width dimension at least in said upper portion is lower than a tensile stress per unit width dimension in said lower area of said rear waist main section,

said tensile stress per unit width dimension in said lower area (25) of the said front waist region (13) = said tensile stress per unit width dimension in said lower area (32) of said rear waist main section(18) + said tensile stress per unit width dimension in said upper portion (19U) of said buttocks-covering section (19),

wherein:
said front waist region includes a plurality of elastic elements (28, 29) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said rear waist region includes a plurality of elastic elements (35, 36) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said buttocks-covering section includes a plurality of elastic elements (37) each in a form of a string or a strand associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction; and
a spacing among said elastic elements associated with said buttocks-

covering section is larger than a spacing among said elastic elements associated with said front and rear waist regions, and wherein
diaper said buttocks-covering section includes, between said upper portion and said lower portion, a middle portion (19M) provided with none of said elastic elements associated therewith.

Auxiliary request 4a

Auxiliary Request 4A

1. A disposable diaper (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of

leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) lying adjacent to said crotch region;

said elastic waist panels (11) comprise a front waist panel (16) forming said front waist region (13) and a rear waist panel (17) forming said rear waist main region (14),

the front and rear waist panels (16, 17) have a regularly rectangular shape which is relatively long in the transverse direction (X) and contoured by an inner end (16a, 17a) extending in the transverse direction (X) to intersect the liquid-absorbent structure (12), an outer end (16b, 17b) spaced from and opposed to the inner end (16a, 17a) in the longitudinal direction (Y) and extending in the transverse direction (X) and side edges (16c, 16d, 17c, 17d) extending between the inner and outer ends (16a, 16b, 17a, 17b) in the longitudinal direction (Y) and spaced from and opposed to each other in the transverse direction (X);

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying adjacent to said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front

waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18),

wherein said buttocks-covering section is divided into an upper portion (19U) lying adjacent to said rear waist main section and a lower portion (19D) lying adjacent to said crotch region wherein a tensile stress per unit width dimension at least in said upper portion is lower than a tensile stress per unit width dimension in said lower area of said rear waist main section,

said tensile stress per unit width dimension in said lower area (25) of the said front waist region (13) = said tensile stress per unit width dimension in said lower area (32) of said rear waist main section(18) + said tensile stress per unit width dimension in said upper portion (19U) of said buttocks-covering section (19),

wherein:
said front waist region includes a plurality of elastic elements (28, 29) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said rear waist region includes a plurality of elastic elements (35, 36) associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction;
said buttocks-covering section includes a plurality of elastic elements (37) each in a form of a string or a strand associated therewith arranged to extend in said transverse direction and spaced one from another in said longitudinal direction; and
a spacing among said elastic elements associated with said buttocks-covering section is larger than a spacing among said elastic elements associated with said front and rear waist regions, and wherein
diaper said buttocks-covering section includes, between said upper portion and said lower portion, a middle portion (19M) provided with none of said elastic elements associated therewith.

Auxiliary request 5 (patent as found allowable by the Opposition division)

Auxiliary Request 5

1. A disposable wearing article (10) having a longitudinal direction (Y), a transverse direction (X) orthogonal to said longitudinal direction and comprising a front waist region (13), a rear waist region (14), a crotch region (15) extending between said front and rear waist regions, a waist-opening (22) and a pair of leg-openings (23), annular elastic waist panels (11) defining said front and rear waist regions and a liquid-absorbent structure (12) attached to the inner surface of said elastic waist panel to define at least a part of said crotch region,
said rear waist region (14) comprising a rear waist main section (18) and a buttocks-covering section (19) extending from said rear waist main section (18) toward said crotch region;

side edges (16c,16d) of the front waist region (13) are put flat together with and joined to respective side edges (17c,17d) of the rear waist main section (18) at seams spots arranged intermittently in the longitudinal direction (Y) whereupon the waist-opening (22) and the pair of leg-opening (23) are formed;

said rear waist main section (18) being divided into an upper area (31) lying adjacent to said waist-opening and a lower area (32) lying on a side of said crotch region;
said front waist region (13) being divided into an upper area (24) lying adjacent to said waist-opening and a lower area (25) lying adjacent to said crotch region; and
a tensile stress per unit width dimension in said buttocks-covering section (19) being lower than a tensile stress per unit width dimension in said lower area of said rear waist main section (18); wherein
a tensile stress per unit width dimension in said lower area (25) of said front waist region (13) is higher than a tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18), and

said tensile stress per unit width dimension in said lower area (25) of said front waist region (13) = said tensile stress per unit width dimension in said lower area (32) of said rear waist main section (18) + said tensile stress per unit width dimension in said buttocks-covering section (19).