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**Datasheet for the decision  
of 29 July 2024**

**Case Number:** T 1484/22 - 3.2.04

**Application Number:** 14835467.3

**Publication Number:** 3097806

**IPC:** A42B3/24, A42B3/22

**Language of the proceedings:** EN

**Title of invention:**  
APPLIED SHEET AND HELMET

**Patent Proprietor:**  
Wins Japan Co. Ltd.

**Opponent:**  
Pinlock Systems B.V.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56

**Keyword:**  
Inventive step - (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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Case Number: T 1484/22 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 29 July 2024**

**Appellant:** Wins Japan Co. Ltd.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 23 March 2022  
revoking European patent No. 3097806 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** J. Wright  
**Members:** S. Hillebrand  
C. Heath

## **Summary of Facts and Submissions**

I. The appeal was filed by the appellant (patent proprietor) against the decision of the opposition division to revoke the patent in suit.

During the opposition proceedings, the opponent raised the grounds for opposition of lack of novelty and inventive step under Article 100(a) EPC, amongst others.

II. The opposition division decided that the subject matter of claim 1 as granted lacked novelty.

III. Oral proceedings in a mixed mode (in-person/video conference) took place on 29 July 2024.

IV. The appellant-proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted, in the alternative that the patent be maintained in amended form according to one of auxiliary requests I to VI all refiled with the statement of grounds of appeal.

The respondent-opponent requests that the appeal be dismissed.

V. The independent claim 1 of the main request and auxiliary request I reads as follows:

"1. A pasting sheet (10) for being pasted on a shield (9) of a helmet (1) comprising; a light transmission sheet (100); and an adhesive layer (120) continuously arranged in a periphery of the light transmission sheet

(100), characterized in that a cross section of the adhesive layer (120) is a convex curved surface".

Claim 1 of auxiliary request II reads as for the main request except that throughout the claim the wording "adhesive layer" is replaced by the wording "pressure-sensitive adhesive layer".

Claim 1 of auxiliary request III and IV read as for auxiliary request 2 except that, throughout the claim, the term "light transmission sheet" is amended to read "light transmission sheet body" and the wording "is a convex curved surface." is replaced by the wording "has a convex curved surface."

Claim 1 of auxiliary request V reads as for the main request except that after the wording "characterized in that", the following wording is inserted: "the adhesive layer (120) is repeelable and readhesive, and in that"

Claim 1 of auxiliary request VI reads as for the main request except that after the wording "characterized in that", the following wording is inserted: "the adhesive layer (120) is repeelable and readhesive, in that the adhesive layer (120) never solidifies, and in that"

VI. Reference is made to the following documents:

D2: US 2010/0175160 A1

D3: US 2012/0102628 A1

VII. The appellant-proprietor's arguments can be summarised as follows:

The subject matter of claim 1 of the main request is new with respect to D3. The Board should deal with the

issue of inventive step rather than remit the case to the opposition division. The subject matter of claim 1 of the main request involves an inventive step starting from D3 in combination with D2. The same applies to auxiliary requests I to V. Auxiliary request VI should be admitted into the appeal proceedings.

VIII. The respondent-opponent's arguments can be summarised as follows:

The subject matter of claim 1 of the main request lacks novelty with respect to D3. If the Board finds the subject matter of claim to be novel, then the case should be remitted to the opposition division for consideration of inventive step starting from D3.

In any case, if it is novel, then the differing feature could only be that the cross section of the adhesive layer is a convex curved surface. The combination of D3 and D2 would lead the skilled person the subject matter of claim 1 as a matter of obviousness. The same applies to the auxiliary requests I to V. Auxiliary request VI should not be admitted into the proceedings.

### **Reasons for the Decision**

1. The appeal is admissible. A request by the respondent-opponent that the appeal be deemed not filed due to insufficient payment of the appeal fee was no longer maintained at the end of the oral proceedings. Nor does the Board see any reason to doubt that the correct appeal fee was paid.
  
2. Background

The patent relates to a transparent sheet which can be attached to the inside of a helmet visor (shield), for example of a motorbike helmet. Such sheets are known and are used to reduce condensation (see the published patent specification, paragraph [0028]). The underlying idea of the invention is that the sheet is arranged for being pasted, that is adhered, to the shield using an adhesive layer.

3. Main request, claim 1, novelty with respect to D3
- 3.1 D3 discloses a light transmitting screen for a visor, thus a sheet (see abstract and figure 1). The sheet has an adhesive layer in the form of a foam gasket that is continuously arranged in its periphery (see for example paragraph [0014] with figure 2 - gasket 2). Therefore, D3's screen constitutes a pasting sheet with an adhesive layer. Thus, the question of novelty turns on whether D3 discloses that its adhesive layer - that is its foam gasket 2 - has a cross section which is a convex curved surface as required by the characterising feature of claim 1.
- 3.2 Since the claimed adhesive layer is in the periphery of the sheet, its major extension follows a loop around the outer edge of the pasting sheet. In the Board's view, the skilled person, reading the claim with a mind willing to understand would normally consider the claimed cross section to mean its transverse cross section and not one extending longitudinally along the loop. Nevertheless, for completeness, the Board notes that in D3's figures 2 and 3 its adhesive layer (foam gasket 2) appears to extend lengthwise with parallel sides. Thus its longitudinal cross section would amount to a flat elongated rectangle. In the Board's view, the skilled person would view the longitudinal profile of

the foam gasket in this way even though, as shown in figure 1, after being glued to the flat sheet 1 (far left of figure 1) and inserted onto the visor of a helmet (middle view in figure 1), it would deform with the sheet to follow the contour of the visor.

- 3.3 As to the transverse cross section of D3's adhesive layer, only its foam structure, material and adhesive properties are described (cf. paragraph [0014]), but not the shape of its profile. The only information pertaining to that is what can be gleaned from figures 2 and 3. Within the limits of how these schematic representations of the foam gasket 2 can be said to directly and unambiguously disclose its true shape, at most both seem to show gaskets of rectangular cross section. Whether or not the skilled person might discern these rectangles to have rounded corners, the Board holds that they would not identify these as constituting a convex curved shape, the four sides of the gasket being essentially flat. Therefore, the subject matter of claim 1 differs from D3 in the feature of the cross section of the adhesive layer being a convex curved surface. Therefore, D3 does not take away novelty of claim 1.
4. Request of the respondent-opponent for remittal of the case to the opposition division for consideration of inventive step starting from D3
  - 4.1 In accordance with Article 11 RPBA, a Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. In the present case the Board sees no such special reasons.

- 4.2 The opposition division found the subject matter of claim 1 of the main request to lack novelty and thus did not allow this request, without having decided on the matter of inventive step starting from D3, which had been raised in the opponent's notice of opposition (see page 7) and briefly treated in the opposition division's annex to the summons, section 11.
- 4.3 In its reply to the appeal, the respondent-opponent (see letter of 5 January 2023, page 3) requested that the case be remitted to the opposition division should the Board decide that the subject matter of the main request was novel. However, as part of its case setting out why it was requesting the impugned decision be upheld (Article 12(3) RPBA), the respondent-opponent also provided detailed substantive arguments as to why it considered this request lacked inventive step starting from D3.
- 4.4 In its communication in preparation for the oral proceedings, the Board commented on inventive step starting from D3 (see points 8.4 and 8.5) and stated (point 8) that it appeared that inventive step starting from D3 (or another document) appeared to be the most critical issue to discuss for the main request. The appellant-proprietor also commented on the issue in its letter of 11 June 2024. Therefore, the Board considered that both the parties and the Board were in the position to discuss the issue of inventive step starting from D3 at the oral proceedings before the Board. In the light of this, the Board saw no special reasons for remitting the case to the opposition division. On the contrary, the evidential framework for the discussion of inventive step starting from D3 is not different from that considered by the Board and the parties when preparing for the oral proceedings in the

context of novelty (D3 and D2 amongst others). Moreover, bearing in mind the need for overall procedural economy, which is all the more relevant in the present case since the opposition division had already held two oral proceedings, the Board saw every reason for it to deal with the question of inventive step starting from D3.

4.5 Therefore, the Board decided to exercise its discretion under Article 111(1) EPC with Article 11 RPBA by not remitting the case to the opposition division for deciding on inventive step starting from D3.

5. Main request, claim 1, inventive step starting from D3 with D2

5.1 In examining inventive step, the Board applies the problem solution approach. In the discussion of novelty, the Board finds the subject matter of the claim to differ from D3 in that *the cross section of the adhesive layer is a convex curved surface*. D3's adhesive layer has a rectangular shaped cross section.

5.2 According to the patent (see published specification, paragraph [0043] with figure 5), where the inner surface of a helmet shield is not parallel to the surface of the sheet body, *by being formed of elastic adhesive having a cross-section of the raised convex surface, the adhesive layer on the surface of the shield 9 can be widely adhere[d]*. The paragraph continues by seemingly explaining, albeit in different words, that by elastic deformation of the adhesive layer, a large contact surface can be achieved. The Board understands this to mean that the initially convex curved shape of an elastic adhesive can deform

to achieve a large surface area for adhering the pasting sheet.

5.3 Given that the requirement of elasticity is not in the claim, the appellant-proprietor has argued that, at least to a certain extent, a larger surface area is achieved without the adhesive needing to be elastic. Rather, purely as a matter of geometry, the convex surface of the adhesive allows the sheet to tangentially contact different points on the adhesive layer, depending on the angle between the sheet and the visor. In contrast, so the appellant-proprietor argued, D3's sheet with its rectangular cross sectionally shaped adhesive layer is designed for attaching sheets that lie parallel to the visor. Where these are not parallel, viewed in cross section, the adhesive layer would only contact the visor at a single point, namely one corner, so adhesion would be inferior. Therefore, so the argument goes, the invention achieves better adhesion for pasting sheets which are not parallel to the visor and the objective technical problem can be formulated as: how to adapt the pasting sheet of D3 to fit visors of different shapes.

5.4 In the Board's view, if the adhesive layer were not elastic, a pasting sheet as claimed would touch the convex curved adhesive layer at only one point, the point of tangency, when viewed in cross section. Whilst it is true that, for different shaped visors there would be different points of tangency (cf. published patent specification, figure 5), this alone would not contribute to improved adhesion compared to an adhesive layer of cross sectional shape (such as a rectangle) that has always the same [corner] point of contact: In both cases the sheet and adhesive layer can only touch at one point. Therefore, from a purely geometric

perspective a non-elastic adhesive having a convex curved surface will not provide superior adhesion to one of rectangular cross section and thus not be better at adapting to different shaped visors than an adhesive layer of rectangular shaped cross section.

- 5.5 That said, rather than the skilled person taking a strict literalist approach, they approach claim wording with a mindset based on everyday experience and practical feasibility. The skilled person will understand that an adhesive will deform when it adheres something. In the case of the claimed adhesive layer, the point of tangency is thus only the first point of contact with the visor. When pressure is subsequently applied, the adhesive layer will deform around the point of tangency, adapting to the shape of the visor and so adopting a new shape. However, in the Board's view, this effect is not greater with an adhesive layer that starts out with a convex curved shape compared to one that starts with a rectangular shape. Both must conform to some new shape as they are pressed to fit snugly against a visor of whatever shape. In the case of D3, its gasket is made of foam. D3 explains (see paragraph [0014], first 7 lines) that it is self conformable, in other words shape adapting, *to enhance the contact between surfaces*. Put differently, just as the claimed adhesive layer will lose its convex curved surface as it adapts to different visor shapes, so too will D3's foam gasket lose its purely rectangular shape as it conforms to different shaped visors. Therefore, the Board does not think that an adhesive layer that starts out having a convex curved cross section will offer superior adaptation of a pasting sheet to a visor compared to D3's rectangular profiled adhesive layer.

- 5.6 Nor is the Board convinced that the claimed convex curved surface cross section solves a problem of allowing a greater range of elasticity or a seal which is less prone to abrasive damage as the the appellant-proprietor has suggested. Neither a degree of elasticity nor any abrasive properties are mentioned in the patent, therefore these arguments are moot.
- 5.7 Therefore, the Board holds that the convex curved shape of the claimed adhesive layer's cross section does not contribute to superior adaption of a pasting sheet to different shaped visors compared to D3's rectangular shaped adhesive layer. It is thus appropriate to formulate a less ambitious objective technical problem than the one proposed by the appellant-proprietor (better adaptation to different shaped visors). The Board agrees with the respondent-opponent that the problem can thus be formulated as: How to provide an alternative cross sectional shape for D3's adhesive layer.
- 5.8 As well as attaching the sheet to the visor, D3's adhesive layer has a sealing function (see paragraph [0019]). Therefore, contrary to how the appellant-proprietor has argued, in solving the objective technical problem (alternative shape), the skilled person would also look to the shapes of seals in the same technical field, whether or not they are adhesive. The skilled person would thus consider D2. It discloses a sheet for fitting inside a helmet visor - an overlay visor in the words of D2 - which also has a seal (see for example paragraphs [0003], [0004], [0014] and [0096] with figures 1, 2 and 4). It is made of silicon which is elastic, so it is implicit that when it seals, it must conform to the shape of the visor. As best seen in figure 4, D2 discloses a seal having a cross section

which is a convex curved surface which the skilled person would immediately recognise as a suitable alternative shape to D3's rectangular shape. The Board concludes that, in solving the objective technical problem posed, the skilled person would adopt D2's convex curved surface cross sectional shape for D3's foam seal and thus arrive at the subject matter of claim 1, as a matter of obviousness.

5.9 In reaching this conclusion, the Board is not convinced by the appellant-proprietor's arguments that it would not be obvious for the skilled person to extract just the idea of using a convex curved shape in isolation from D2's teaching to make a non-adhesive silicon seal in a mould and that if the skilled person combined the teachings of D3 and D2 they would adopt D2's seal without modification, which would result in a non-adhesive seal, thus not an adhesive layer as claimed.

5.10 These arguments are not convincing because, when faced with the objective technical problem, the skilled person only has their eyes on finding a suitable alternative shape for D3's adhesive layer. Therefore, they would look to just the shape of D2's seal, divorced from its process of manufacture and non-adhesive character, and extract just the teaching about its shape. In any case, the skilled person would not abandon the adhesive property of D3's layer because this is necessary for attaching D3's sheet to the visor.

Moreover, the parties agree that D3's seal would be provided in the form of a foam tape. In the Board's view it would require no more than the skilled person's routine skills to manufacture such a tape from the start with a convex curved, rather than rectangular,

cross sectional profile. Therefore whether or not it would be obvious to make a rectangular shaped tape and then file down its edges into a convex curve, as the appellant-proprietor has suggested the skilled person might need to do to arrive at the invention, can be left unanswered.

5.11 From the above, the Board finds that the subject matter of claim 1 lacks inventive step starting from D3 in combination with D2. Therefore, the main request fails. Whether or not it might lack novelty with respect to other documents or lack inventive step when considering other combinations of documents can therefore be left undecided.

6. Auxiliary request I, claim 1, inventive step

Claim 1 of this request is the same as for the main request, therefore it lacks inventive step for the reasons given for the main request.

7. Auxiliary requests II to V, claim 1, inventive step

7.1 Claim 1 of auxiliary request II adds the feature that the adhesive layer is a pressure sensitive adhesive. Pressure sensitive adhesives are those that remain tacky so that they can be unstuck and re-stuck. D3's adhesive layer adheres a pasting sheet that is designed to be removable and repositionable (see D3's claim 1), therefore it is also a pressure sensitive adhesive.

In this regard, the appellant-proprietor has argued that in claiming the adhesive to be pressure sensitive, a degree of elasticity is implied which, in combination with the feature of a convex curved surface cross section has a technical effect of improved adaptation

to different shaped visors compared to D3. The Board disagrees.

As explained above for the main request, D3 already discloses an elastic adhesive layer, namely one made of foam. Moreover, the effect of elasticity in combination with a convex curved shape does not lead to a better adaptation to different shaped visors compared to an adhesive layer of rectangular cross section: both initially touch at one point and then deform to adapt to the shape of the visor. Therefore, the argument is moot.

Consequently, the subject matter of claim 1 lacks inventive step for the same reasons as the main request.

7.2 Claim 1 of auxiliary requests III and IV adds to auxiliary request 2 that the light transmission sheet is a body. In the Board's view, this means no more than that it has a physical form, which is also the case for D3's sheet. Moreover, the Board sees no more than a semantic difference between defining that the cross section of the adhesive layer *has* a convex curved surface, as in these requests, compared to one that *is* a convex curved surface, as in the higher ranking requests. Therefore the subject matter of auxiliary requests III and IV lacks inventive step for the same reasons as apply to the main request and auxiliary request II.

7.3 Claim 1 of auxiliary request V reads as for the main request except that it adds the feature of the adhesive layer being peelable and readhesive. As already explained, this is just another way of saying it is a pressure sensitive adhesive, as defined in auxiliary

request II. D3 likewise exhibits this feature (see its claim 1). Therefore, the subject matter of this request lacks inventive step for the same reasons as apply to the main request and auxiliary request II.

- 7.4 Since the Board is of the opinion that the subject matter of the main request and auxiliary requests I to V lacks inventive step, they are not allowable. Therefore, whether or not any of the auxiliary requests might be inadmissible or unallowable due to added subject matter, or whether or not various translations of the originally filed application are accurate can be left undecided.

8. Auxiliary request VI

- 8.1 Auxiliary request VI was not admitted into the opposition proceedings. In its communication in preparation for the oral proceedings (see section 16), the Board gave a preliminary opinion that it did not intend to admit this request into the appeal proceedings. The Board wrote as follows:

*16. Auxiliary request 6 [VI], admittance*

*Auxiliary request 6 [VI] was filed at the very end of the opposition proceedings, namely during the oral proceedings. The opposition division exercised its discretion by not admitting it into the proceedings.*

*In accordance with Article 12(6) RPBA, the Board shall not admit requests [...] which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the*

*circumstances of the appeal case justify their admittance.*

*16.1 The Board does not consider that the circumstances of the appeal case justify the admittance of auxiliary request 6, nor has this been argued. Nor is the Board convinced that the opposition division's decision not to admit auxiliary request 6 [VI] suffered from an error in the use of discretion.*

*16.2 According to the undisputed minutes, page 4, the question of admittance of auxiliary request 6 [VI] was made after discussion with the parties, therefore their right to be heard was respected. In its decision (see section 9) the opposition division has explained why it did not admit auxiliary request 6 [VI] into the proceedings. Amongst other things, it explained that the amendment which took wording from the description could not have been foreseen by the other party, as opposed to an amendment taken from the granted claim set (cf. auxiliary request 5 [V]). Moreover, the division noted that the amendment potentially raised new issues of clarity and sufficiency of disclosure. Therefore, contrary to how the appellant-proprietor has argued, the Board considers that the opposition division did not exercise its discretion arbitrarily in not admitting auxiliary request 6 [VI] (having admitted auxiliary request 5 [V]). Furthermore, in its decision it fully substantiated the reasons for not admitting auxiliary request 6 [VI] into the proceedings.*

*16.3 For these reasons, the Board does not intend to admit auxiliary request 6 [VI] into the proceedings.*

8.2 Neither in written proceedings nor at the oral proceedings did the parties comment on this aspect of

the communication. In the absence of any such comments, the Board saw no reason to deviate from its preliminary opinion. Therefore, it decided not to admit auxiliary request VI into the appeal proceedings, Article 12(6) RPBA.

9. Since the main request and auxiliary requests I to V are not allowable and the remaining auxiliary request VI is not admitted into the proceedings, the Board must dismiss the appeal.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



A. Chavinier

J. Wright

Decision electronically authenticated