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**Datasheet for the decision
of 22 October 2024**

Case Number: T 2114/22 - 3.2.06

Application Number: 18156475.8

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Language of the proceedings: EN

Title of invention:
ABSORBENT STRUCTURE FOR ABSORBENT ARTICLES

Patent Proprietor:
The Procter & Gamble Company

Opponents:
Kimberly-Clark Worldwide, Inc.

Headword:

Relevant legal provisions:
EPC 1973 Art. 76(1)

Keyword:

Amendments - extension beyond the content of the parent application as filed (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2114/22 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 22 October 2024

Appellant: Kimberly-Clark Worldwide, Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 July 2022 concerning maintenance of the
European Patent No. 3338751 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
S. Ruhwinkel

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 3 338 751 in an amended form met the requirements of the EPC.
- II. The appellant requested in its statement of grounds of appeal that the decision under appeal be set aside and the patent be revoked.
- III. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed or that the patent be maintained according to one of the auxiliary requests 1 to 11 filed with the reply to the statement of grounds of appeal.
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of the main request appeared not to meet the requirement of Article 76(1) EPC. It further noted that none of the auxiliary requests appeared to overcome this objection.
- V. Oral proceedings were held before the Board by videoconference on 22 October 2024. At the close of the oral proceedings the parties' requests were unchanged from points II and III above.
- VI. Claim 1 of the main request reads as follows (with feature annotation as used by the opposition division in its decision):

"F1: A method of making an absorbent structure (13) for

an absorbent article, the absorbent structure comprising:

F2: a supporting sheet (16) and an absorbent layer (17) supported thereon, said absorbent layer (17) comprising an absorbent material (50) that contains at least a superabsorbent polymer material and optionally a cellulosic material;

F3: said absorbent structure (13) and absorbent layer (17) having a longitudinal dimension and average length, a transverse dimension and average width, a height, and front, back and crotch regions arranged sequentially in said longitudinal dimension, said absorbent layer (17) also having a longitudinal axis and perpendicular thereto a transverse axis;

F4: said absorbent layer (17) having a first longitudinally extending side portion (20) on one side of said longitudinal axis, and a second longitudinally extending side portion (20) on the other side of said longitudinal axis;

F5: whereby said absorbent layer (17) has at least a first substantially longitudinally extending channel (26) present in said first side portion (20), and a second substantially longitudinally extending channel (26) present in said second side portion (20), said channels (26) being substantially free of said superabsorbent polymer material, and extending through said height of said absorbent layer (17), wherein each of said channels (26) extends longitudinally,

F6: whereby each of said channels (26) extends at least twice as much in the longitudinal direction than it does in the transverse direction; and

F7: whereby said absorbent structure (13) comprises one or more adhesive materials (40, 60) to at least partially immobilize said absorbent layer (17) onto said supporting sheet (16), wherein the method comprises

F8: placing said supporting sheet (16) onto raised portions with a shape and dimensions corresponding to said first and second channels (26), such that said supporting sheet (16) is provided with raised portions and remaining portions; and

F9: depositing said absorbent material (50) onto said supporting sheet (16), wherein said absorbent material (50) does not remain on the raised portions of the supporting sheet (16), but remains only on the remaining portions of the supporting sheet (16),

F10: wherein said absorbent layer (17) of said absorbent structure (13) has a pair of longitudinal side edges (18), a transverse front edge (19) and a transverse back edge (19),

F11: and wherein said channels (26) do not extend up to any of said edges (18, 19), and

F12: wherein the method further comprising a step of assembling the absorbent structure (13) into a diaper (1)."

Claim 1 of auxiliary request 1 reads as for claim 1 of the main request with the addition of the following feature between features F6 and F7:

"wherein each of said channels (26) has an average width of from 4% to 25% of said average width of said absorbent layer (17), and each of said channels (26) has an average length of from 5% to 80% of said average length of said absorbent layer (17)".

Claim 1 of auxiliary request 2 reads as for claim 1 of the main request with the addition of the following feature between features F6 and F7:

"wherein each of said channels (26) has an average width of from 4% to 25% of said average width of said

absorbent layer (17), and each of said channels (26) has an average length of from 5% to 80% of said average length of said absorbent layer (17), wherein a smallest transverse distance between said first and second channels is at least 5% of said average width of said absorbent layer".

Claim 1 of auxiliary request 3 reads as for claim 1 of the main request with the addition of the following feature between features F11 and F12:

"wherein said one or more adhesive material (40, 60) of the absorbent structure (13) includes a first adhesive material (40) applied to said absorbent layer (17) or part thereof, once said layer is present on said supporting sheet (16), and a second adhesive material (60) present between said supporting sheet (16) and said absorbent layer (17), applied to said supporting sheet (16) or part thereof prior to deposition of said absorbent layer (17) or absorbent material (50) thereof onto said supporting sheet (16)".

Claim 1 of auxiliary request 4 reads as for claim 1 of auxiliary request 3 with the addition of the following feature between features F6 and F7:

"wherein each of said channels (26) has an average width of from 4% to 25% of said average width of said absorbent layer (17), and each of said channels (26) has an average length of from 5% to 80% of said average length of said absorbent layer (17)".

Claim 1 of auxiliary request 5 reads as for claim 1 of auxiliary request 3 with the addition of the following feature between features F6 and F7:

"wherein each of said channels (26) has an average width of from 4% to 25% of said average width of said absorbent layer (17), and each of said channels (26) has an average length of from 5% to 80% of said average length of said absorbent layer (17), wherein a smallest transverse distance between said first and second channels is at least 5% of said average width of said absorbent layer".

In each of auxiliary requests 6 to 11 all of the dependent claims have been deleted. The respective claim 1 of auxiliary requests 6 to 11 thus read as for claim 1 of the main request and auxiliary requests 1 to 5 respectively.

VII. The appellant's arguments relevant to the present decision may be summarised as follows:

Main request

The subject-matter of claim 1 did not meet the requirement of Article 76(1) EPC. The method described from page 26, line 29 to page 27, line 2 of the parent application as filed did not directly and unambiguously disclose a method directed to manufacturing the diaper as defined in features F1 to F7, F10 and F11 of claim 1. Page 26, line 29 to page 27, line 2 failed to disclose that the supporting sheet itself formed raised portions. This passage of the description disclosed raised portions only for the 'mold' onto which the supporting sheet was placed. In the quoted passage the 'said raised portions' referred back to these raised portions of the mold rather than any adopted by the supporting sheet. All that was disclosed related to the supporting sheet being placed on to the raised portions. Several factors of the manufacturing process would dictate whether the supporting sheet itself

comprised raised portions, such as the tension under which the supporting sheet was held or the relative orientation of the machine prohibiting the supporting sheet from sagging around the raised portions of the mold. Whilst it was possible for the supporting sheet itself to have raised portions, this was not the only technically reasonable interpretation of the cited passage of the description.

The 'second' method disclosed from page 27, line 3 to page 28, line 19 included several additional method steps (see steps c) and d) for example on page 27) which had not been included in claim 1 such that this disclosure could also not provide a direct and unambiguous basis for the claimed subject-matter.

Auxiliary requests

The features added to claim 1 of each of auxiliary requests 1 to 11 failed to overcome the objection of added subject-matter such that Article 76(1) EPC was not met for each of these requests.

VIII. The respondent's arguments relevant to the present decision may be summarised as follows:

Main request

The subject-matter of claim 1 did not extend beyond the content of the parent application as filed. A generally applicable basis for the method claim including the product features F1 to F7, F10 and F11 could be found on page 26, line 29 to page 27, line 2 of the (parent) application as filed. Regarding the raised portions of the supporting sheet defined in feature F8, these were implicit from the above disclosure. This disclosed that the sheet was placed on a surface having raised portions and, implicitly, remaining portions. The absorbent material was then deposited on the supporting

sheet, remaining only on the remaining portions of the supporting sheet. The skilled reader would only see this to be referring to the raised portions of the supporting sheet. From this disclosure it was implicit that both the supporting sheet and the underlying surface had both raised portions and remaining portions. In the manufacture of absorbent articles it was commonplace for absorbent material to be placed on a supporting sheet. The conjunction 'thereby' in the last line of page 26 provided the link between the deposit of the absorbent material onto the supporting sheet and the raised portions of the supporting sheet causing the absorbent material not to remain on them. The reference signs used in the paragraph bridging pages 26 and 27 were of a general nature and should not be seen as limiting to a particular absorbent structure.

The correctness of this interpretation was confirmed by the 'second' method disclosed from page 27, line 3 to page 28, line 19 which was an embodiment of the 'first' method.

Auxiliary requests

Claim 1 of auxiliary request 1 met the requirement of Article 76(1) EPC, page 26, line 29 to page 27, line 2 of the application as filed disclosing that the absorbent structure herein could be made by any method. Claim 1 of auxiliary request 2 had been further amended with basis on page 3, lines 22 to 24.

Claim 1 of each of auxiliary requests 3 to 5 complied with Article 76(1) EPC since the general method was disclosed to be applicable to any absorbent structure of the invention.

The respective claim 1 of each of auxiliary requests 6

to 11 met the requirement of Article 76(1) EPC for the same reasons as the main request and auxiliary requests 1 to 5 respectively.

Reasons for the Decision

1. *Main request*

Article 76(1) EPC

- 1.1 As found by the opposition division in its decision under point 4.1.2, page 1, line 1 to page 30, line 8 of the description for each of the application as filed, the parent application as filed and the grandparent application as filed are identical.
- 1.2 Claim 1 is directed to a method of making an absorbent structure. The parent application as filed included no method claims such that a basis for claim 1 is not to be found in the claims of the parent application. The basis for claim 1 can thus, if at all, solely be based on the description in the parent application as filed, the respondent referring *inter alia* to page 2, line 24 to page 3, line 21 and page 26, line 29 to page 27, line 2.
- 1.3 Feature F8 requires the supporting sheet to form raised portions, the remaining portions of the supporting sheet being lower than the raised portions. The supporting sheet as defined thus forms a 3-dimensional surface.
- 1.4 The basis for claiming the supporting sheet to have raised portions was given by the respondent as page 26,

line 29 to page 27, line 2 of the parent application as filed which states:

'The absorbent structure (13) herein may be made by any method comprising the step of depositing absorbent material (50) onto a supporting sheet (16), for example by pacing (*sic*) first said supporting sheet (16) onto raised portions in the shape and dimensions of said channels (26) to be produced and then depositing said absorbent material (50) thereon; thereby, the absorbent material (50) does not remain onto said raised portions, but only on the remaining portions of the supporting sheet (16)'.

However, this passage fails to disclose the supporting sheet itself being provided with raised portions. For at least this reason, therefore, the claimed subject-matter extends beyond the content of the parent application as filed, contrary to the requirement of Article 76(1) EPC.

- 1.5 The respondent's contention that page 26, line 29 provided a generally applicable basis for any method claim is not accepted. Whilst this line of the description does state that the 'absorbent structure herein may be made by any method ...' this is not seen to apply generally to any absorbent structure, not only explicitly but also implicitly, disclosed in the parent application, not least due to the specific reference signs included in the paragraph cited in point 1.4 above. A specific 'absorbent structure (13)' is addressed, such that there is no unambiguous disclosure in this paragraph of a method applicable for manufacture of anything other than the specifically disclosed embodiments in the description comprising such an absorbent structure (13). The absorbent

structure defined in features F1 to F7, F10 and F11 of claim 1 is also not one of these specifically disclosed embodiments. The respondent's further argument in this regard, that the reference signs between parentheses in this portion of the description should not be seen as limiting, but rather, as was the case with claims, were merely to assist understanding, is not persuasive. Throughout the description reference signs in parentheses are used in relation to the disclosed embodiments and the figures such that there is no logic to assume that, in the paragraph bridging pages 26 and 27, a different standard was being applied and the reference signs were no longer specifically referring to the explicitly disclosed embodiments.

- 1.6 The respondent's still further argument that it was implicit from the cited description passage that the supporting sheet also had raised portions is not accepted. It is not necessarily the case, also from a technical point of view, that the supporting sheet will itself adopt the raised portions of the mold as a result of it simply being 'placed onto raised portions in the shape and dimensions of said channels to be produced'. Indeed, as the appellant argued, dependent on the tension under which the supporting sheet is held or if the relative machine orientation does not result in sagging of the sheet, the supporting sheet may well not adopt a 3-dimensional structure. In such instances, the presence of the absorbent material on the remaining portions of the supporting sheet, as defined in feature F9, could be controlled e.g. by vacuum. Consequently there is no direct and unambiguous disclosure in this passage of the description of the supporting sheet itself having raised portions.

1.7 The respondent's argument that the skilled reader would understand the reference to 'said raised portions' on line 1 of page 27 as relating to the supporting sheet itself having such raised portions is also not accepted. The first recitation of 'raised portions' in this paragraph is unambiguously related to the 'mold' (i.e. the structure comprising raised portions in the shape and dimensions of channels) onto which the supporting sheet is placed. The immediately evident implication of the phrase 'said raised portions' in the following part of the sentence after the semi-colon is thus to the raised portions of the 'mold'. Yet, this runs counter to the skilled person's understanding of the construction of the subject absorbent structure since the mold itself would not have any absorbent material placed directly on it. The Board thus concurs with the respondent's contention that the skilled person would understand this paragraph in such a way that absorbent material was put only on the supporting sheet itself, rather than on the remaining portions of the mold. However, even when depositing the absorbent material on the supporting sheet, the sentence bridging pages 26 and 27 discloses that 'absorbent material does not remain onto *said* raised portions' which can technically reasonably indeed be understood to mean that absorbent material simply does not remain on the part of the supporting sheet aligned with the raised portions of the 'mold'. As already stated above, the absorbent material could be positioned using a vacuum (a technique well-known in this technical area for directing and/or holding absorbent material) such that no need for physically raised portions of the supporting sheet is required in order for the absorbent material to solely reside on the remaining portions of the supporting sheet. Even the presence of the word 'thereby' linking these two parts of the sentence does

not unambiguously mean that raised portions should be recognised as being formed in the supporting sheet. Whilst the respondent's interpretation of this paragraph is a possible reading, it is not the only technically reasonable interpretation (which would be required for the requisite direct and unambiguous basis for the claimed subject-matter to be recognised).

1.8 The respondent's reference to a 'second' method, disclosed from page 27, line 3 to page 28, line 19, does not change the above conclusion. Even if this method can be understood to be an embodiment of the 'first' method, the 'second' method includes many more detailed method steps which, not being reflected in claim 1, does not result in this providing a direct and unambiguous basis for the supporting sheet being provided with raised portions as defined in feature F8 of claim 1.

1.9 It thus follows that, at least for this reason, the subject-matter of claim 1 extends beyond the content of the parent application as filed, such that the requirement of Article 76(1) EPC is not fulfilled.

1.10 The main request is thus not allowable.

2. *Auxiliary request 1*

2.1 Relative to claim 1 of the main request, claim 1 of auxiliary request 1 additionally defines average width and length ranges for the channels as a percentage of the average width and length of the absorbent layer.

2.2 This addition fails to address the objection under Article 76(1) EPC detailed above, that the recitation in claim 1 of the supporting sheet having raised

portions lacks a direct and unambiguous basis.

2.3 At oral proceedings before the Board the respondent merely referred to its written submissions, in which reference was made to the conclusion of the opposition division with respect to this subject-matter, quoting page 26, line 29 to page 27, line 2 of the application as filed to disclose that the absorbent structure herein could be made by any method. As found in point 1.5 above, this paragraph does not provide a generally applicable disclosure of a method to manufacture any possible absorbent article disclosed in the (parent) application as filed, certainly not one in which the supporting sheet has raised portions. No argument was provided by the respondent as to how the specifically added features to claim 1 might overcome the objection under Article 76(1) EPC.

2.4 The subject-matter of claim 1 thus fails to meet the requirement of Article 76(1) EPC. Auxiliary request 1 is not allowable.

3. *Auxiliary request 2*

3.1 Relative to claim 1 of auxiliary request 1, claim 1 includes the further limitation linking a smallest transverse distance between the channels and the average width of the absorbent layer. A basis for this amendment was given as page 3, lines 22 to 24 of the (parent) application as filed yet, as for claim 1 of auxiliary request 1, the amendment fails to address the objection under Article 76(1) EPC found prejudicial to its allowability.

3.2 The subject-matter of claim 1 thus fails to meet the requirement of Article 76(1) EPC. Auxiliary request 2

is not allowable.

4. *Auxiliary request 3*

4.1 Relative to claim 1 of the main request, claim 1 includes further limitations relating to the application of first and second adhesive materials. As for the claimed subject-matter overcoming the added subject-matter objection of the foregoing requests, the respondent merely referred to its written submissions, in which reference was made to the conclusion of the opposition division with respect to this subject-matter, again quoting page 26, line 29 to page 27, line 2 of the (parent) application as filed to disclose that the absorbent structure herein could be made by any method. However, as found in point 1.5 above, this paragraph does not provide a generally applicable disclosure of a method, certainly not one in which the supporting sheet has raised portions.

4.2 The subject-matter of claim 1 thus fails to meet the requirement of Article 76(1) EPC. Auxiliary request 3 is not allowable.

5. *Auxiliary requests 4 and 5*

5.1 Claim 1 of auxiliary requests 4 and 5 differ from claim 1 of auxiliary request 3 by the features added to claim 1 of auxiliary requests 1 and 2 respectively. With none of these added features having been found to address the added subject-matter objection to claim 1 of the main request and the respondent having limited its case to its written submissions, the Board finds auxiliary requests 4 and 5 to meet with the same objection.

5.2 The subject-matter of claim 1 of each of auxiliary requests 4 and 5 thus fails to meet the requirement of Article 76(1) EPC. Auxiliary requests 4 and 5 are thus not allowable.

6. *Auxiliary requests 6 to 11*

6.1 These requests correspond to the main request and auxiliary requests 1 to 5 respectively with all the dependent claims deleted. For the same reasons as given for the main request and auxiliary requests 1 to 5, therefore, the subject-matter of claim 1 of each of auxiliary requests 6 to 11 fails to meet the requirement of Article 76(1) EPC.

6.2 Auxiliary requests 6 to 11 are thus also not allowable.

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:



D. Grundner

M. Harrison

Decision electronically authenticated