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Datasheet for the decision of 6 June 2024

Case Number: T 2166/22 - 3.2.01

Application Number: 15813465.0

Publication Number: 3393416

IPC: A61F13/42, A61F13/84, A61B5/20

Language of the proceedings: EN

Title of invention:
WEARABLE ABSORBENT ARTICLE

Patent Proprietor:
ESSITY HYGIENE AND HEALTH AKTIEBOLAG

Opponent:
Maiwald GmbH

Headword:

Relevant legal provisions:
EPC 1973 Art. 100(b), 100(a), 54, 56

Keyword:
sufficiency of disclosure - yes
Main request - novelty - yes
Main request - Inventive step - no
Auxiliary request 2 - inventive step - no
Auxiliary request 3 - Inventive step - yes

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
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Case Number: T 2166/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 6 June 2024

Appellant: (Opponent)	Maiwald GmbH Elisenhof, Elisenstrasse 3 80335 München (DE)
Respondent: (Patent Proprietor)	ESSITY HYGIENE AND HEALTH AKTIEBOLAG 405 03 Göteborg (SE)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 20 July 2022 rejecting the opposition filed against European patent No. 3393416 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	S. Mangin
	M. Millet

Summary of Facts and Submissions

I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit (hereinafter "the patent").

II. The opposition division rejected the opposition. They held that:
- the subject-matter of claim 1 was novel over E3 (WO 2014/035340) and involved an inventive step starting from E8 (US 2013/0321007), E9 (US 2014/0350503 A1) and E10 (US 2014/0371702 A1).
- the invention was disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

III. Oral proceedings were held before the Board on 6 June 2024.

IV. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted (main request) or in the alternative that the patent be maintained on the basis of the second, third, first or fourth to eighth auxiliary request (in this order) all filed with the reply to the grounds of appeal.

V. Claim 1 of the main request reads:

(A) A wearable absorbent article (10) comprising:

(B) a conductor arrangement (2); wherein
(B1) the conductor arrangement (2) comprises a plurality of elongate conductors (4), each conductor (4) extending along an extension direction,
(B2) at least some of the conductors (4) have different lengths from each other in the respective extension directions, and
(B3) those of the at least some of the conductors (4) which have larger lengths in the respective extension directions have lower electrical resistances per unit length than those of the at least some of the conductors (4) which have smaller lengths in the respective extension directions,
(C) the wearable absorbent article (10) further comprising an absorbent core (17) and
(D) a wetness detection unit (21) for detecting wetness at one or more locations within the absorbent core (17),
(D1) wherein the conductors (4) are arranged so as to be electrically insulated from the absorbent core (17),
(D2) wherein each of the conductors (4) is electrically connected to a respective electrode (6),
(D3) the electrodes (6) are arranged in contact with the absorbent core (17), and
(D4) the wetness detection unit (21) is configured to detect the wetness at the one or more locations within the absorbent core (17) by measuring the electrical resistance between two of the electrodes (6) through the conductors (4).

VI. Claim 1 of auxiliary request 2 corresponds to claim 1 of the main request with the additional following feature:

"wherein those of the at least some of the conductors (4) which have larger lengths in the respective

extension directions have cross-sectional areas perpendicular to the respective extension directions which are larger than the cross-sectional areas perpendicular to the respective extension directions of those of the at least some of the conductors (4) which have smaller lengths in the respective extension directions".

VII. Claim 1 of auxiliary request 3 corresponds to claim 1 of auxiliary request 2 with the additional following feature:
"wherein the cross-sectional areas of the conductors (4) perpendicular to the respective extension directions are substantially proportional to the lengths of the conductors (4) in the respective extension directions".

VIII. The following further documents are cited:
E1: WO 2015/068124 A1
E2: US 2015/0042489 A1
E3: WO 2014/035340 A1
E4: US 2005/0156744 A1
E5: WO 2008/026120 A2
E6: US 2013/0307570 A1
E7: US 2008/0051745 A1
E11: WO 2011/145787 A1
E12: English machine translation of E11
E13: US 4,356,818
E14: KR 10-2011-0113008
E15: English machine translation of E14

Reasons for the Decision

1. Main request

1.1 Sufficiency of disclosure

The invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

During oral proceedings both parties referred to their written submissions.

1.1.1 The appellant (opponent) was of the opinion that feature B3 reading: *"those of the at least some of the conductors (4) which have larger lengths in the respective extension directions have lower electrical resistances per unit length than those of the at least some of the conductors (4) which have smaller lengths in the respective extension directions",* was not limited to the case where all the conductors had the same overall resistance. It did not require that the higher total resistance of the longer conductors was exactly compensated by a lower resistance per unit length. Moreover, claim 1 contained no limitations e.g. as to the dimensions or materials of the conductors, or the distance between the electrodes.

Feature B3 equally covered the case where the total resistance of the longer conductors was still larger than that of the shorter conductors, as well as the case where the total resistance of the longer conductors was in fact lower than that of the shorter conductors.

Neither claim 1 nor the patent explained how much lower the resistance per unit length of the "longer" conductors must be than that of the "shorter" ones. It was therefore not derivable from the patent what exactly needed to be done to put in practice the

alleged invention and to achieve the alleged technical effect in view of the breadth of claim 1.
In particular, the patent did not provide sufficient instructions, neither in claim 1 itself nor in the description, for the skilled person to know which and how many of the conductors were the ones with the relatively "larger lengths" and which/how many of the conductors were those with the relatively "shorter lengths".

1.1.2 The Board is not convinced by the arguments of the appellant (opponent) and confirms its preliminary opinion stated under point 4 of its communication under Article 15(1) RPBA.

Claim 1 does not require that the electrical resistance of the conductors be the same. The resulting electrical resistance of the conductors (4) may indeed be different if the lower electrical resistance per unit length does not compensate for the larger length of the conductor.
The degree of accuracy of wetness may not be improved by the invention defined in claim 1 as stated in paragraph [0019] of the patent, however the degree of accuracy is not defined in claim 1 such that, as the opposition division mentioned it is not an issue under sufficiency of disclosure.

The skilled person has enough information in the description and the figures to reproduce the invention as claimed.
In particular, the patent provides enough information in particular in paragraphs [0047]-[0061] and the schematic figures 2, 3 and 5 to carry out the invention taking into consideration the common general knowledge.

1.2 Novelty over E3

The subject-matter of claim 1 is novel over E3.

During oral proceedings the parties referred to their written submissions.

1.2.1 The appellant (opponent) argued that E3 disclosed features D4, B2 and B3:

- Regarding feature D4:
E3 described in the section bridging pages 7 and 8, specifically in the second paragraph on page 8 (lines 10 to 14) that the ionized liquid (i.e., urine) electrically connected the two electrodes, and *"provides a means or channel via which charge carriers (e.g. electrons or holes) can move or flow between the electrodes"*. In other words, as a consequence of ionized liquid the electrodes would be conductively connected so that a current could flow – meaning that the resistance between the electrodes was lowered. In other words, the potential difference could only be measured when there was a difference in electrical resistance which caused the potential difference. Hence, measurement of a potential difference according to E3 implied the determination of a change in electrical resistance. Feature (D4) was thus disclosed in E3.

- Regarding feature B2:
Since electrodes and conductors were considered a unity in accordance with E3 and mostly simply referred to as "electrodes", the statements relating to the electrodes being "thicker and/or longer" (E3, page 10, lines 13-14), that "one of the electrodes may be positioned further into the diaper than the other electrode" (E3,

page 11, lines 27-28) or that "one or more electrodes may have a different length and/or width" (page 15, lines 17-18) in E3 equally related to the conductor parts of these electrodes.

Also, reference was made to figures 6 of E3 and the corresponding section of the description of E3 starting on page 13, line 27 and in particular page 15, lines 18-25 of E3 relating to figure 6(c) and the particular arrangement of electrodes described therein: Some electrodes may be positioned closer to each other than others. Consequently, the conductor parts connecting the electrodes to the electronic control unit located in one particular place must have a different length (while all of the conductors extend along the same direction, i.e. towards the electronic control unit). Thus, feature (B2) of claim 1 of the patent was disclosed in E3.

- Regarding feature B3
E3 disclosed that the electrodes (which included the conductors) may be "thicker and/or longer", and that they may have a "different length and/or width". Accordingly, this disclosure meant nothing else but "longer and having a larger cross-sectional area", and was the same as claimed in dependent claim 5 of the patent as granted. As dependent claim 5 was an embodiment falling within the subject-matter defined in claim 1, feature (B3) of claim 1 of the patent was thus also anticipated by E3. It was a basic physical principle that the electrical resistance of conductors was inversely proportional to their cross sectional area (all other features being similar), i.e. a thicker conductor had a lower electrical resistance than a thinner conductor.

Claim 1 of the patent was not limited quantitatively as to how much longer certain conductors had to be, and how much lower their respective electrical resistance had to be for this feature to be fulfilled. Due to this lack of limitation or definition, any (even minor) variations of thickness in conductors of different length, which was common in the mass production of e.g. diapers which were produced at very high line speeds, automatically led to the situation where at least some of the longer conductors had lower electrical resistance per unit length because of e.g. a larger cross-sectional area.

1.2.2 The Board is not convinced by the arguments of the appellant (opponent) and confirms its preliminary opinion expressed under point 5 in its communication pursuant to Article 15(1) RPBA. The subject-matter of claim 1 differs from E3 at least in view of features D4 and B3.

E3 does not measure the electrical resistance but measures the potential difference (page 7, lines 9-21). This is confirmed by the passage on page 25, first paragraph disclosing that *"a system which measured capacitance and/or conductance in the electrodes, rather than potential difference, would be less effective because both capacitance and conductance are more dependent on urine concentration"*.

Furthermore, E3 teaches that:
- "one electrode may be thicker and/or longer than the other" (page 10, lines 13 and 14 of E3), and - "one or more electrodes may have a different length and/or width to one or more other electrodes" (page 15, lines 16 to 18 and claim 7 of E3).

The above passages merely indicate that the electrodes' dimensions may differ but do not provide any suggestion that longer electrodes may have lower electrical resistances per unit length.

1.3 Inventive step starting from E3

The subject-matter of claim 1 involves an inventive step starting from E3.

During oral proceedings, the parties referred to their written submissions.

1.3.1 Under point 2 on page 22 of the statement of the grounds of appeal, the appellant (opponent) argued that E3 could be used as closest prior art in case it was not already considered novelty destroying. E3 disclosed all features of claim 1, except for a literal disclosure of features (B3). However, this feature did not provide any technical effect and the objective technical problem was to be defined as the provision of an alternative absorbent article. Providing an absorbent article according to claim 1 including feature (B3) relating to the electrical resistance of the various conductors used was obvious.

It was well known and standard in the technical field of wetness detection in absorbent articles to use conductors of e.g. different dimensions (length, width) and/or material. All these parameters influenced the total resistance of the conductor, with width (or cross-sectional area) and material influencing the resistance per unit length, i.e., the property feature (B3) was concerned with. The appellant (opponent) referred to documents E1-E7, E12, E13, E15.

1.3.2 As stated above, the subject-matter of claim 1 differs from E3 due to at least the two separate features B3 and D4. Even assuming that feature B3 is obvious, feature D4 is still missing. The appellant (opponent) has not submitted any argument why feature D4 relating to the detection of wetness by measuring the electrical resistance would be obvious. Starting from E3, it is not obvious for the skilled person to measure the electrical resistance, since they are taught that it would be less effective (reference is made to E3, page 7, lines 9-21). The Board therefore concludes that starting from E3, the skilled person would not arrive at the subject-matter of claim 1 in an obvious manner.

1.4 Inventive step starting from E8, E9 or E10

The subject-matter of claim 1 does not involve an inventive step starting from E8, E9 and E10

The parties agreed that subject-matter of claim 1 differed from E8, E9 and E10 in that:
(B3) *"those of the at least some of the conductors (4) which have larger lengths in the respective extension directions have lower electrical resistances per unit length than those of the at least some of the conductors (4) which have smaller lengths in the respective extension directions".*

1.4.1 The respondent (proprietor) argued that feature B3 provided the technical effect of compensating for the differences in total resistance of the conductors which were due to their different lengths. This allowed for wetness at one or more locations within the absorbent article to be detected with a high degree of accuracy (paragraph [0019] of the patent).

None of the documents E8, E9 and E10 offered an indication to the skilled person that the above identified objective technical problem might be solved by the distinguishing feature of claim 1. In particular, these documents did not provide any hint or suggestion that differences in resistance resulting from different conductor lengths may reduce the measurement accuracy of wetness detection. There was no teaching in these documents which might guide the skilled person towards the subject-matter of claim 1.

Further, documents E1, E2, E3, E4, E5, E6, E7, E12, E13 and E15 did not offer any incentive which might prompt the skilled person to modify the absorbent article of E8, E9 or E10 in such a manner as to arrive at the subject-matter of claim 1. The sections of these documents cited in the passage from page 27, paragraph 128 to page 28, paragraph 137 of the statement of grounds of appeal were entirely irrelevant in this regard. In fact, none of these documents disclosed or suggested feature B3 of claim 1. Even alleging that it was "a standard and obvious workshop variation to use conductors of different dimensions and/or materials, resulting in conductors of different resistances per unit length", there would be no indication that the longer conductors had lower resistances per unit length than the shorter conductors (feature B3). Hence, even a combination of all of these documents with E8, E9 or E10 would not yield the features of the claim. Moreover, feature B3 did not belong to the skilled person's common general knowledge. In any case, no support at all for this allegation had been provided by the appellant (opponent).

Therefore, the subject-matter of granted claim 1 was inventive over the disclosure of E8, E9 or E10, also

when further taking into consideration one or more of documents E1 to E7, E12, E13 and E15.

The respondent (proprietor) further argued that the subject-matter of claim 1 would also be inventive over the cited prior art if the objective technical problem were formulated as providing an alternative absorbent article. Also in this case, there would be no pointer in the prior art relied upon by the appellant (opponent) which might prompt the skilled person to configure the leads of E8, E9 or E10 in such a manner that those of the leads which have larger lengths in the respective extension directions have lower electrical resistances per unit length than those of the leads which have smaller lengths in the respective extension directions. Meaning that the longer the lead was, the lower the resistance of the lead was ("staggered resistance"). Even a combination of all of the numerous prior art documents cited by the appellant (opponent) in this respect did not yield feature B3. Feature B3 was not "one of a number of known possibilities" or "a possible solution which was available to the skilled person", let alone an "alternative known in the underlying technical field". Feature B3 was neither disclosed nor suggested in any of the available prior art documents.

The respondent (proprietor) argued in particular that starting from E8, the skilled person would not use five different conductor materials (with different conductivities) in the embodiment of figure 1 to arrive at the subject-matter of claim 1.

1.4.2 The Board judges that the alleged technical effect is not achieved over the whole scope of claim 1. As explained by the appellant (opponent), the electrical

resistance of the conductors may differ even when the longer conductors have lower electrical resistances per unit length than the shorter conductors (4) if the electrical resistance per unit length of the longer conductors is not lowered enough or lowered too much. The Board notes that the difference in resistance between a longer and a shorter conductor may actually be even increased if for example the electrical resistance per unit area is lowered too much. Therefore, a decrease or elimination of the difference of electrical resistance between the longer and shorter conductors will not be achieved over the whole scope of claim 1.

The problem to be solved is therefore to be formulated as the provision of an absorbent article with an alternative wetness detecting device.

As argued by the appellant (opponent), starting from documents E8, E9 or E10, the skilled person may arbitrarily take a lower electrical resistance per unit length for the longer conductors simply by e.g. selecting wires of different cross-sectional area or different materials depending on circumstances. It is common general knowledge that reducing the cross-section of the conductor and/or selecting a material with a higher electric conductivity will decrease the electrical resistance of the conductor per unit length. The selection of a lower electrical resistance per unit length for longer conductors is a non-inventive selection among a number of known possibilities available to the skilled person.

Furthermore, the Board notes that feature B3 does not require that the longer the conductor, the lower the electrical resistance. Indeed, feature B3 reads:

"those of the at least some of the conductors (4) which have larger lengths in the respective extension directions have lower electrical resistances per unit length than those of the at least some of the conductors (4) which have smaller lengths in the respective extension directions".
It is sufficient that one of the longer conductors has a lower electrical resistance.
Starting from E8, but also from E9 or E10, it is therefore obvious for the skilled person to arbitrarily lower the electrical resistance of one of the longer conductors, either by using a conductor with a lower conductivity or by increasing the cross-section of the conductor.

2. Change of order of the auxiliary requests - admissibility under Article 13(2) RPBA

At the beginning of the oral proceedings, the respondent (proprietor) changed the order of their auxiliary requests. Auxiliary requests 2 and 3 were to be considered before auxiliary request 1.

The Board admitted the change of order of the auxiliary requests.

2.1 The appellant (opponent) requested not to admit the reordering of the requests. They argued that it was an amendment to the respondent's appeal case which should not be admitted under Article 13(2) RPBA 2020. In their view auxiliary requests 2 and 3 being broader than auxiliary request 1 the reordering of these requests before auxiliary request 1 would affect the procedural economy of the appeal procedure i.e. if auxiliary request 2 was considered unallowable, auxiliary request 3 and 1 would still have to be discussed, whereas if

auxiliary request 1 was considered unallowable, auxiliary requests 2 and 3 would not need to be discussed because these auxiliary requests would be as a consequence also unallowable.

2.2 The Board cannot follow the arguments of the appellant (opponent).

Firstly, the factual and legal framework of the respondent's (proprietor's) appeal has not changed with the reordering of the auxiliary requests. Indeed, all of the auxiliary requests were submitted in opposition proceedings and resubmitted with the reply to the statement of grounds of appeal and were not discussed in the appealed decision as the opposition division rejected the opposition.

Secondly, as mentioned by the respondent (proprietor) the scope of claim 1 of auxiliary request 1 is not broader than the scope of claim 1 of auxiliary request 2 and 3 but their scope overlap. Therefore, if claim 1 of auxiliary request 1 is unallowable, this does not necessarily imply that claim 1 of auxiliary requests 2 and 3 would be unallowable. The argument regarding the procedural economy thus fails.

3. Auxiliary request 2

The subject-matter of claim 1 comprises the additional feature that:
"at least some of the conductors (4) which have larger lengths in the respective extension directions have cross-sectional areas perpendicular to the respective extension directions which are larger than the cross-sectional areas perpendicular to the respective extension directions of those of the at least some of

the conductors (4) which have smaller lengths in the respective extension directions".

The subject-matter of claim 1 does not involve an inventive step starting from E10 in combination with E5

3.1 The parties agreed that the subject-matter of claim 1 differed from E8, E9 and E10 in that feature B3 and the added feature were not disclosed.

3.1.1 According to the appellant (opponent), the added feature did not provide any technical effect since the larger cross-section of the larger conductor may not compensate or may overcompensate the difference in electrical resistance of one of the shorter and one of the larder conductor.

The problem to be solved was the provision of an alternative absorbent article.

Starting from any of the documents E8, E9 and E10 the skilled person would arbitrarily increase the cross section of one of the longer conductors.

The appellant (opponent) particularly referred to the combination of the teaching of E10, where the conductors are printed, with the teaching of E5. Paragraph [56] on page 17 of E5 disclosed that the thickness of printed conductors may vary from 1 to 8 micrometers and that the conductive ink can be printed on the selected substrate two or more times to deliver more conductive ink to the selected substrate. Therefore, starting from the printed conductors of E10, the skilled person would obviously arrive at the subject-matter of claim 1 by arbitrarily increasing the thickness of one of the longer conductors.

3.1.2 The respondent (proprietor) argued that the differentiating features provided an effect, namely the increased accuracy of the wetness measurements. In their view there were no incentive for the skilled person to combine the teaching of either one of the documents E8, E9 or E10 with any of the cited documents by the appellant (opponent) to arrive at the subject-matter of claim 1.

The respondent (proprietor) also argued that even if the problem to be solved were to be considered as the provision of an alternative the skilled person starting from E8, E9 or E10 would not change all the cross-sections of the conductors to arrive at conductors having a larger cross-section the longer they are ("staggered cross-section"). The respondent (proprietor) noted that none of the documents disclosed increasing the cross-section of the conductors, the longer they were. Furthermore, the teaching of an increased width or an increased thickness was not equivalent to an increased cross section. E5 did not teach an increased cross-section but only an increased thickness.

3.1.3 The Board is not convinced by the arguments of the respondent (proprietor).

The Board agrees with the appellant (opponent) that the combination of the teaching of E10 with E5 leads to the subject-matter of claim 1 in an obvious manner. Starting from the printed conductors in E10, the problem to be solved is to be defined as the provision of an absorbent article comprising an alternative wetness detector. Indeed, similarly to claim 1 of the main request, the added feature, namely the larger

cross-section of at least one of the longer electrical conductor, may not compensate or overcompensate the resistance of the shorter conductor. The effect alleged by the respondent (proprietor) is therefore not achieved over the whole scope of claim 1.

The skilled person is taught in E5 that the thickness of the printed conductors may vary and that the conductive ink optionally may be printed on the substrate two or more times to deliver more conductive ink to the selected substrate. Printing two or more times would increase the thickness and the cross-section of the printed ink. Indeed, this passage does not teach to decrease the width of the printed ink such that the cross-section remains the same. On the contrary the passage cited discloses that thereby more conductive ink is delivered.

Furthermore, the added feature does not require that the longer the conductors the larger their cross-sections should be. Similarly, to feature B3, it is sufficient for one of the longer conductors to be larger in cross-section than one of the shorter conductors.

Therefore, starting from E10, the skilled person can arbitrarily increase the cross-section of one of the longer conductors as taught in E5 to arrive at the subject-matter of claim 1.

4. Auxiliary request 3

Claim 1 of auxiliary request 3 corresponds to claim 1 of auxiliary request 2 with the following additional feature:

"wherein the cross-sectional areas of the conductors (4) perpendicular to the respective extension directions are substantially proportional to the lengths of the conductors (4) in the respective extension directions".

The subject-matter of claim 1 involves an inventive step starting from either E8, E9 or E10.

4.1 The appellant (opponent) argued that similarly to the main request and auxiliary request 2, the added feature in auxiliary request 3 did not require the conductors to have the same resistance. Therefore, the problem to be solved was to be regarded as the provision of an alternative. And even, if the resistance of the conductors were required to be the same, the alleged technical effect, i.e. the increased accuracy of the wetness measurement was neither supported by the patent, which did not provide any data, nor common general knowledge. In their view the measurement was a difference in resistance before and after the diaper being wet, the absolute value of the conductor's resistance did not play a role in the resistance measurement. Therefore, no technical effect could be derived from the differentiating features and the problem to be solved was the provision of an alternative.

Starting from any of the documents D8, D9 and D10 it was obvious for the skilled person to arrive at the subject-matter of claim 1, by having the cross-sectional areas of the conductors proportional to the length of the conductors.

4.2 The respondent (proprietor) argued that the added feature implied that the resistance of the conductors was the same.

The technical problem to be solved was therefore the detection of wetness with a particularly high degree of accuracy. The respondent (proprietor) argued that the resistance of the conductors being the same it decreased the interfering noise and thus enabled a more accurate measurement of the wetness.

Starting from any of the documents E8, E9 or E10 there was no incentive for the skilled person to change the cross-section of the conductors so that all the conductors have the same resistance.

4.3 The Board is not convinced by the arguments of the appellant (opponent).
Paragraph [0050] of the patent states that the added feature ensures that there are no differences between the resistance of the conductors. If the cross-section is proportional to the length of the conductors, the cross-section will for example double if the length of the conductor is doubled. The resistance being proportional to the length of the conductor and inversely proportional to the cross-section of the conductor, means that the resistance of the conductors are the same when the conductors are made of the same conductive material, which is the case in E8, E9 and E10.

Whether or not the conductors having the same resistance lead to the alleged technical effect, starting from E8, E9 or E10, the skilled person does not arrive at the subject-matter of claim 1 in an obvious manner. Indeed, even if the problem to be

solved is regarded as providing an absorbent article with an alternative wetness detector, the skilled person starting from any of the documents E8, E9 or E10 would not change the cross-section of all of the conductors to arrive at conductors having the same resistance. None of the cited documents teaches the skilled person to use conductors having the same resistance. Only a possible variation of the cross-section of the conductors is taught in the cited documents (see in particular E5).

5. Adaptation of the description.

Paragraphs [0049] and [0050] were adapted to the allowable auxiliary request 3.

5.1 The appellant (opponent) pointed to paragraphs [0010], [0019] and [0059] which they alleged were to be further amended to remove discrepancies with claim 1 of auxiliary request 3.

5.2 The Board is of the opinion that paragraph [0009] clearly discloses that the invention is according to the technical features of claim 1.

Paragraphs [0010],[0019] and [0059] refer to some of the features of the invention defined in claim 1. i.e. not all of the feature of claim 1 are recited in these paragraphs. However, these paragraphs are not in contradiction with claim 1. As mentioned by the respondent (proprietor), there are no discrepancies between these paragraphs and the subject-matter of claim 1.
Therefore, paragraphs [0010], [0019] and [0059] do not need to be amended.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the following documents:

Claims:
1 to 11 according to auxiliary request 3 filed with the reply to the statement of grounds of appeal,

Description:
page 5 as filed today in the oral proceedings before the board, pages 2 to 4 and 6 to 9 of the published patent specification,

Figures:
1 to 6 of the published patent specification.

The Registrar: The Chairman:

H. Jenney G. Pricolo

Decision electronically authenticated