Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 3 April 2025

Case Number: T 0093/23 - 3.2.06

Application Number: 14782012.0

Publication Number: 3049564

IPC: D04H1/541, D04H1/26, D04H1/4266, D04H1/4291, D04H1/4309, D04H1/435, D04H1/485, D04H3/007, D04H3/009, D04H3/015, D04H3/14

Language of the proceedings: EN

Title of invention:
NONWOVEN WEB WITH HIGHLY DETAILED AND STRUCTURALLY ADVANTAGEOUS BOND PATTERN

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Fitesa Germany GmbH

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - main request (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0093/23 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 April 2025

Appellant: (Opponent)	Fitesa Germany GmbH Woltorfer Straße 124 31224 Peine (DE)
Representative:	van Wijk, Alexander Pieter Mainstay IP PO Box 169 8330 AD Steenwijk (NL)
Respondent: (Patent Proprietor)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	P&G Patent Germany Procter & Gamble Service GmbH Sulzbacher Straße 40 65824 Schwalbach am Taunus (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 22 November 2022 concerning maintenance of the European Patent No. 3049564 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	P. Cipriano
	J. Hoppe

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 3 049 564. It requested that the decision under appeal be set aside and the patent be revoked. It also requested oral proceedings.

II. With its reply, the respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained in amended form according to auxiliary request 1.

III. The following document is relevant to the present decision:
D1 US 2013/0071630 Al

IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion.

V. Oral proceedings were held before the Board on 3 April 2025, during which the respondent withdrew auxiliary request 1.

At the close of the oral proceedings, the requests were as follows:

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

the respondent requested that the appeal be dismissed, i.e. that the patent be maintained in amended form

based on the main request filed with the reply to the grounds of appeal.

VI. Claim 1 of the main request reads as follows:
"A nonwoven web formed at least in part of filaments, fibers or a combination thereof, comprising a pattern of bonded areas at which differing ones of the fibers and/or filaments are bonded together, the pattern of bonded areas having been impressed into the nonwoven web by one or more bonding rollers each having a cylindrical surface bearing a pattern of bonding surfaces, the bonding surfaces of the one or more rollers in combination forming a bonding area having a bonding area percentage from 6 to 14 percent, wherein the bonding area has an average bonding area dispersion distance of no less than 1.0 mm and no greater than 5 mm."

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

Main request - Inventive step

The "Fibrous Structure" Examples 1-3 as described in the opposed patent (see page 21, lines 27 to 47) were identical to the "Fibrous Structure" Examples 1-3 described in D1 (see paragraphs [0215]-[0217]). In addition, the patterns of Figure 12 of D1 were the same as the one of Figure 14 of the patent and the materials labelled "Example" respectively in Table 1 on page 14 of the patent had the same properties as the ones labelled "invention" on page 12 of D1 such that it was clear that D1 disclosed the same nonwoven web as the one claimed in the patent.

Should it be considered that D1 did not disclose an average bonding area dispersion distance of no less than 1.0 mm, this feature anyway did not provide any effect and was simply an arbitrarily chosen value which was obvious.

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

Main request - Inventive step

D1 did not disclose a nonwoven web with a bonding area having a bonding area percentage from 6 to 14 percent, wherein the bonding area has an average bonding area dispersion distance of no less than 1.0 mm and no greater than 5 mm, either explicitly or implicitly.

The bonding area percentage and the average bonding area dispersion distance were not disclosed for the materials of D1, which were not the same materials as the ones of the patent.

Should it be considered that only the feature "an average bonding area dispersion distance of no less than 1.0 mm" was not disclosed, this feature provided the effect stated in paragraph [0071] of the patent and solved the objective problem of providing a nonwoven web with a bonding pattern that could be manufactured more efficiently/reliably.

There was no teaching in D1 to solve this technical problem, even less so by providing an average bonding area dispersion distance of no less than 1.0 mm.

Reasons for the Decision

1. Main request - Article 56 EPC

1.1 D1 discloses in paragraphs [0215] to [0217] three "Fibrous Structure" Examples, the bond pattern of which is shown in Figure 12.

1.2 It was not contested by the respondent that these examples correspond to nonwoven webs formed at least in part of filaments, fibers or a combination thereof, comprising a pattern of bonded areas at which differing ones of the fibers and/or filaments are bonded together, the pattern of bonded areas having been impressed into the nonwoven web by one or more bonding rollers each having a cylindrical surface bearing a pattern of bonding surfaces, the bonding surfaces of the one or more rollers in combination forming a bonding area. The Board also sees no reason to find otherwise.

1.3 D1 does not explicitly disclose that the bonding area in these examples has a bonding area percentage from 6 to 14 percent.

However, the patent also discloses three Fibrous Structure Examples in paragraphs [0130] to [0132], the bonding pattern of each of these being as shown in Figure 14. The bonding pattern of Figure 14 in the patent is for embodiments of the invention of the application as filed. As such, the bonding pattern of Fig. 14 is therefore understood, necessarily, to have a bonding area percentage from 6 to 14 percent as likewise defined in claim 1 of the application as filed, which defines the broadest protection sought for

the invention as originally filed, including its various disclosed embodiments. Figure 14 of the patent and Figure 12 of D1 show identical patterns to be imparted to a fibrous structure, such that the only logical conclusion that can be drawn by a skilled person when considering the two disclosures is that the pattern of Figure 12 in D1 necessarily has a bonding area percentage from 6 to 14 percent.

1.4 The respondent argued that this was not necessarily the case, because the "Fibrous Structure Examples 1 to 3" of the patent were nowhere explicitly indicated to be according to the invention and were simply referred to as "Examples". Nowhere was it stated that Figure 14 was a pattern suitable to be used in the nonwoven web of the invention. In the absence of any scale or dimension, the bonding area percentage of Figure 14 was simply unknown.

This argument is, however, not persuasive. First, the skilled person reading the patent description would understand that Fibrous Structure Examples 1, 2 and 3 constitute ways of carrying out the invention, not least as there are no other examples. This is also confirmed, for example, by these examples being referred to on page 21, line 25 of the patent as "Non-limiting", which can only be understood to mean non-limiting examples of the invention.

The Board can, however, concur with the respondent to the extent that the scale and the dimensions of the pattern in Figure 14 of the patent are not known. Nevertheless these factors are irrelevant for establishing the bonding area percentage, as the bonding area "percentage" of an identical pattern is not dependent on its scale and specific dimensions, but

only on its shape design. As argued by the appellant, the relative proportions between the shapes in the pattern are also the same, which was as such not disputed. Thus, it must be concluded that the pattern in D1 necessarily has the same bonding area percentage as that of Fig. 14 of the patent.

1.5 Consequently, the Fibrous Structure Examples 1, 2 and 3 of paragraphs [0215], [0216] and [0217] of D1 (referring to Figure 12) implicitly disclose a bonding area percentage lying in the range of 6 to 14 percent.

1.6 D1 also does not explicitly disclose that the bonding area has an average bonding area dispersion distance of no greater than 5 mm.

Unlike above, this feature is, however, dependent on the scale of the drawings and these are schematic such that even if Figure 12 of D1 and Figure 14 of the patent show identical patterns, but at a different scale, the actual sizes could differ, such that the presence of identical patterns is not enough, by itself, to conclude that the average bonding area dispersion distance is the same in D1 as in the patent.

1.7 However, the materials used in the examples of D1 and of the patent also have identical properties, as evident from Table 1 on page 12 of D1 (see the first three rows labelled"Invention") and in Table 1 on page 14 of the patent (see the first three rows labelled "Example"). They must therefore refer to identical nonwoven materials.

Taking the property "CD Wet Initial Tensile Strength", this has the values 8.7, 6.6 and 6.0 for the three invention/examples in Table 1 of both D1 and the

patent. This property is dependent on the size of the bonding pattern as the tensile strength in the CD direction is affected not only by the shape and the size of the bond patterns but also by the distance between them.

The presence of identical values used on identical nonwovens, with the same bond patterns, unambiguously leads to the conclusion that the bond pattern of the Fibrous Structure Examples 1, 2 and 3 of D1 has the same size as the Fibrous Structure Examples 1, 2 and 3 of the patent.

1.8 As discussed above, the Fibrous Structure Examples 1, 2 and 3 of the patent are embodiments of the invention and therefore their respective bonding area has an average bonding area dispersion distance of no greater than 5 mm as this is also defined in claim 1 of the application as filed; hence the Fibrous Structure Examples 1, 2 and 3 of D1 likewise have this maximum value.

1.9 However, claim 1 of the patent application as filed, does not define that the bonding area has an average bonding area dispersion distance of no less than 1.0 mm. Instead, this feature is described in paragraph [0071] merely as a desirable feature of the invention such that it cannot be concluded unambiguously that this feature is an implicit feature of the Fibrous Structure Examples 1, 2 and 3 of the patent and consequently of the Fibrous Structure Examples 1, 2 and 3 of D1.

1.10 D1 therefore does not disclose that the bonding area has an average bonding area dispersion distance of no less than 1.0 mm.

1.11 The respondent argued that, when starting from D1 as the closest prior art, in line with paragraph [0071] of the patent, the space between bonding surfaces may become so small, or "pinched," that groups of filaments and/or fibers may be forced into the spaces and wedge and catch between the bonding projections on the bonding roller as the web passes through the compression passage between the rollers so that the filaments and/or fibers are pulled away from the web as the web exits the compression passage. The respondent alleged that, even in the absence of any supporting data, it was credible that the problem was solved for an average bonding area dispersion distance of no less than 1.0 mm and there was no teaching in the prior art how to arrive at such values.

However, this argument is not accepted by the Board. Whilst it is true that a value of 0 mm is evidently not technically sensible (since it would mean that there were only bonding areas), the Board can agree that the effect described in paragraph [0071] may indeed be present when the distance between the bonding surfaces becomes very small. This effect nevertheless depends on the specific pattern and not on the average bonding area dispersion distance. A pattern may, for example, have an average bonding area dispersion distance which is above 1 mm yet still have many areas where the distance between bonding areas is very small (as long as those areas are counterbalanced by areas where the distance is much bigger) and where the filaments and/or fibers are hence pulled away from the web. The effect stated in paragraph [0071] is therefore not dependent on the average bonding dispersion distance, but instead on the number of regions in which the distance between bonding areas is below a certain value. In addition,

even if a small average bonding area dispersion distance could somehow give rise to a tendency, albeit dependent on the pattern, for the number of points being at a small distance from the bonded areas to be large, there is no effect associated with the specific value of 1 mm, at least over the whole range (of possible patterns) falling within the claim.

1.12 Therefore, the feature that the average bonding area dispersion distance is no less than 1.0 mm does not provide any technical effect and, as such, is merely an arbitrary value. The selection of such a value for the lower end point of the range, by the very fact of it being arbitrary, cannot involve any inventive step.

1.13 The Board therefore concludes that the subject-matter of claim 1 lacks an inventive step (Article 56 EPC), so that the respondent's sole request cannot be allowed.

2. Absent any set of claims which would meet the requirements of the EPC, the request of the appellant to revoke the patent is to be met (Article 101(3)(b) EPC).

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