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**Datasheet for the decision
of 30 September 2025**

Case Number: T 0672/23 - 3.2.04

Application Number: 17200847.6

Publication Number: 3403631

IPC: A61F13/475, A61F13/49,
A61F13/511, A61F13/534

Language of the proceedings: EN

Title of invention:

ABSORBENT ARTICLE WITH CHANNELS AND METHOD FOR MANUFACTURING
THEREOF

Patent Proprietor:

Drylock Technologies NV

Opponent:

Ontex BV

Headword:

Relevant legal provisions:

EPC Art. 100(c), 123(2)

Keyword:

Grounds for opposition - added subject-matter (yes)
Amendments - selections from two or more lists

Decisions cited:

G 0002/10, T 2255/12, T 1269/06, T 1255/18

Catchword:



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Case Number: T 0672/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 30 September 2025

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 February
2023 revoking European patent No. 3403631
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman P. Cipriano
Members: M. Hannam
W. Ungler

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (patent proprietor) against the decision of the opposition division revoking European Patent No. 3 403 631.
- II. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request), in the alternative that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 25 filed with the statement of grounds of appeal.
- III. The respondent (opponent) requested that the appeal be dismissed. Furthermore, it requested that, should the Board find that the main request or any of auxiliary requests 1 to 25 meet the requirements of Article 123(2) EPC, the case be remitted to the opposition division.
- 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 ground for opposition under Article 100(c) EPC seemed to prejudice maintenance of the patent as granted. It further indicated that none of the auxiliary requests appeared to overcome this objection.
- V. Oral proceedings were held before the Board on 30 September 2025, at the close of which the parties' requests were as indicated in points II. and III. above.
- VI. Claim 1 of the main request reads as follows:

"An absorbent article comprising a liquid pervious topsheet, a liquid impervious backsheet, and an absorbent core comprising an absorbent material between a top core wrap sheet and a back core wrap sheet, said absorbent core being positioned in between said topsheet and said backsheet; said absorbent core having a first and second longitudinal edge (131, 132) and a front and rear transverse edge (133, 134), wherein the absorbent core is provided with a plurality of attachment zones where the top core wrap sheet is attached to the back core wrap sheet, wherein a position and/or shape of one or more attachment zones of the plurality of attachment zones is indicated by means of a distinguishable color and/or colored pattern which is provided on the backsheet so as to allow a user to easily distinguish a front and a rear portion of the absorbent article, wherein the plurality of attachment zones comprises:

- at least a first and a second elongate attachment zone, said first and second elongate attachment zone extending next to each other from a crotch region in the direction of the front and/or rear transverse edge; characterized in that the plurality of attachment zones further comprises:

- at least one connecting attachment zone connecting said first attachment zone with said second attachment zone; and in that the length of the first and the second elongate attachment zone is larger than 20% of the length of the absorbent core."

In view of the decision with respect to the main request, a recitation of the specific wording of claim 1 of each of auxiliary requests 1 to 25 is not required.

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

Main request

The ground for opposition under Article 100(c) EPC was not prejudicial to maintenance of the patent as granted.

Regarding the 20% length feature, this had basis in claim 14 as filed and did not require a selection to be made. The adoption of the 20% value into claim 1 was the most preferred option, the 30% simply being an example of a value greater than 20%. The values of 20% and 30% could thus not be seen as a disclosure of two equally weighted options.

Regarding the color and/or colored pattern being provided on the backsheet, even if the inclusion of the backsheet in claim 1 was a selection from page 11, lines 12 to 13, the skilled person understood that this was the preferred option and was thus unambiguously disclosed. The backsheet was the portion of the article most readily observed by the user such that placing the color/colored pattern here was implicit. Placing this on the topsheet would be undesirable due to transfer of color to the user. The reference to page 44, line 15 disclosed the color/colored pattern being 'visible when looking at the topsheet', and so could reasonably still be printed on the backsheet and be visible at the topsheet due to the attachment zones generally being free of absorbent material.

As for the color/colored pattern allowing a user to distinguish a front and rear portion of the absorbent article, this was implicit from page 11, lines 8 to 9 in which a distinguishable color and/or colored pattern

indicated the position and/or shape of the attachment zones. The ability to distinguish a front and a rear portion pertained to the effect of this feature as was also disclosed on page 20, lines 16 to 18.

Taken alone, page 20, lines 16 to 18 also provided a basis for this feature of claim 1. The skilled reader would see this passage as being the preferred of the three options disclosed from lines 16 to 27 since options B and C additionally required a 'linking' of the color and/or pattern to the characteristic of the absorbent article, which step was not required for option A in which the color and/or pattern itself was disclosed to allow a distinguishing of the front and rear portion. Option A was thus the preferred disclosure, not least since by not requiring the 'linking step', the fewest features had to be taken up into claim 1.

Auxiliary requests 1 to 25

Essentially the same arguments as presented for the main request supported the subject-matter of claim 1 of each request meeting the requirement of Article 123(2) EPC.

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

Main request

The ground for opposition under Article 100(c) EPC was prejudicial to maintenance of the patent as granted.

Claim 14 as filed disclosed the larger than 20% and the larger than 30% conditions with an equal level of

preference such that including the larger than 20% condition in claim 1 was a first selection.

The inclusion in claim 1 of the color and/or colored pattern being provided on the backsheet required a second selection from the disclosure on page 11, lines 12 to 13 to be made. Page 44, line 15 indicated that print on the topsheet was also an option contemplated in the application as filed.

As regards the color and/or colored pattern allowing a front and rear portion of the absorbent article to be distinguished, this lacked even an implicit disclosure on page 11 as filed since the color and/or colored pattern alone included no features allowing such a distinction. Page 20, lines 16 to 27 disclosed three equally weighted options such that selecting option A lacked any preference.

It thus followed that three selections from lists were required to arrive at the claimed subject-matter which thus lacked a direct and unambiguous basis.

Auxiliary requests 1 to 25

None of these requests overcame the added matter objection, albeit here under Article 123(2) EPC.

Reasons for the Decision

1. *Main request*

Article 100(c) EPC

1.1 The ground for opposition under Article 100(c) EPC is prejudicial to maintenance of the patent as granted.

1.2 Relative to claim 1 as filed, the following features have been added to claim 1:

1. the length of the first and the second elongate attachment zone is larger than 20% of the length of the absorbent core; and

2. wherein a position and/or shape of one or more attachment zones of the plurality of attachment zones is indicated by means of a distinguishable color and/or colored pattern which is provided on the backsheet so as to allow a user to easily distinguish a front and a rear portion of the absorbent article.

1.3 As its foundation for the analysis of allowable amendments, the Board refers to the 'gold standard' according to which, an amendment relating to disclosure can, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed (G 2/10, OJ EPO 2012, 376, point 4.3 of the Reasons). It further sees that an analysis of whether selections from multiple lists of options have been

made is merely a tool to assist in establishing whether the gold standard is met (see for example T 1255/18, also cited by the appellant at oral proceedings before the Board).

1.4 Regarding the alleged basis for the first feature in point 1.2 above coming from claim 14 as filed, this is not persuasive. Claim 14 recites a number of options for the length of the first and second elongate attachment zone, from larger than 5% of the length of the absorbent core; preferably larger than 10%, more preferably larger than 15%, to even more preferably larger than 20%, for example larger than 30%. The most preferred percentage length of the attachment zones is thus larger than 20% of the absorbent core length, an example of this being 'larger than 30%'. Not least linguistically, the Board finds the larger than 20% option and the example of larger than 30% to be disclosed at the same level of preference such that the inclusion of the 20% value in claim 1 requires a selection at least between 'larger than 20%' and 'larger than 30%'.

1.4.1 This linguistic understanding of claim 14 is further corroborated when consulting page 9, lines 15 to 17 as filed in which the 20% value is disclosed as part of a list of more preferred options including also 'larger than 30%' and even 'larger than 40%'. Whilst not decisive for the objection since the basis relied upon by the appellant is claim 14, this passage of the description underlines the correctness of the Board's understanding of claim 14 as given in point 1.4 above.

- 1.4.2 The inclusion of this feature in claim 1 thus presents a first selection from a list in the original disclosure.

- 1.5 As regards the alleged basis for the distinguishable color and/or colored pattern being provided on the backsheet, this was given as page 11, lines 12 to 13 as filed. This discloses the color and/or colored pattern being provided on at least one of the topsheet, the top core wrap sheet, the backsheet and the back core wrap sheet. The singling out of the backsheet for inclusion in claim 1 is thus a selection from a list of equally weighted options lacking any preference.
 - 1.5.1 The appellant's argument that the skilled person understood the backsheet option to be preferred since this was the portion of the article most readily observed by the user is not accepted. Whilst how the skilled person would understand the description is of fundamental importance for what is disclosed, the referenced passage from page 11, lines 12 to 13 simply does not disclose a preference between the four equally weighted options disclosed. Each of the options would also be seen as technically reasonable for the skilled person in order to enable the color and/or colored pattern to be seen. From the cited passage, therefore, the skilled person would not see the backsheet as implicitly being the drafter's intention.

 - 1.5.2 The appellant's argument that placing the color and/or colored pattern on the topsheet would not be considered by the skilled person due to colour potentially transferring to the wearer's skin does not persuade that this option would be dismissed. Even if it were unusual to do this, the sole direct and unambiguous disclosure of where the color and/or colored pattern is

provided in the application as filed is for this to be on at least one of the four explicitly recited locations. No preference is indicated and a prejudice on the part of the skilled person as to what is typical in the art cannot override an unambiguous disclosure of the four equally weighted alternatives.

- 1.5.3 The reference to page 44, line 15 with respect to the color/colored pattern being 'visible when looking at the topsheet' is not seen to be decisive either way for this issue. The color/colored pattern could indeed be provided on the topsheet, thus making it visible but, as opined by the appellant, the visibility when looking at the topsheet does not exclude the color/colored pattern being on the backsheet and being visible when looking at the topsheet due to the attachment zones excluding absorbent material and thus leaving solely relatively transparent layers between the observer and the backsheet.
- 1.5.4 Nonetheless, in summary, the inclusion in claim 1 of the color and/or colored pattern being provided on the backsheet requires a second selection to be made from four equally weighted alternatives in the description.
- 1.6 Regarding the final feature added to claim 1 in which the distinguishable color and/or colored pattern allows a user to easily distinguish a front and a rear portion of the absorbent article, basis for this was firstly given as page 11, lines 8 to 9 as filed. This portion of the description fails to even mention the front or rear portion of the absorbent article, let alone an unambiguous link between the color and/or colored pattern and the front and rear of the article.

1.6.1 The appellant's alleged implicit disclosure is also not accepted. Page 11, lines 8 to 9 read, "A position and/or shape of one or more attachment zones of the plurality of attachment zones may be indicated by means of a distinguishable color and/or colored pattern". It is not accepted that either the color and/or colored pattern or the position/shape of the attachment zones would necessarily enable a front and rear of the article to be determined. Whilst arrangements enabling this can be envisaged e.g. an arrow-shape pointing forwards, or perhaps a specific color differentiation between the front and rear of the article, no such arrangements are disclosed. It thus follows that the skilled person finds no direct and unambiguous link on page 11, lines 8 to 9, neither explicitly nor implicitly, that the color and/or colored pattern allows a front and a rear portion of the article to be distinguished.

1.6.2 The appellant's reference to page 20, lines 16 to 18 as filed for an unambiguous basis of the alleged link between the color/colored pattern and the front/rear of the article is also not accepted. This passage is part of a more detailed disclosure relating to the color and/or colored pattern on page 20, lines 16 to 27 which discloses three options. These are disclosed, with labelling A to C also used by the opposition division, as follows:

Option A - the position/shape of a distinguishable color/colored pattern allows a user to easily recognize a front and a rear portion of the absorbent article (see page 20, lines 16 to 22);

Option B - (the alternative) in which the position/shape of a distinguishable color/colored pattern is linked to a certain characteristic of the absorbent

article such as size or type etc. (page 20, lines 23 to 27);

Option C - (the combination of A and B) in which both the front and rear portion and the characteristic of the article are indicated by the position/shape of the color/colored pattern (page 20, lines 23 to 27).

Choosing 'Option A' for inclusion in claim 1 is thus a third selection, in this case from three equally weighted originally disclosed alternatives.

1.6.3 The appellant's contention that the skilled reader would see Option A as the preferred option, since Options B and C additionally required a 'linking' (see line 25 of page 20 as filed) of the color and/or pattern to the characteristic of the absorbent article which was more complicated, is not accepted. As the respondent also argued, the alleged greater complexity caused by the required 'linking' for options B and C is not evident. In option A, for the user to recognise the significance of a color and/or colored pattern in order to distinguish a front and rear portion of an article, a link must already have been made and memorised by them, e.g. a green color signifying the front of the article, or a spotted pattern indicating the left side of an article. A greater complication in options B and C compared to option A is thus not evident, since a link in the sense argued by the appellant also appears to be implicitly required in Option A. No preference would thus be presented to the skilled reader to select option A over any of the three disclosed options.

1.6.4 Even if option A were to have been the simpler option to be incorporated into claim 1, this would still not satisfy a direct and unambiguous disclosure of option A over options B and C. Page 20, lines 16 to 27 as filed

discloses each of the three options without any preference and a simpler option, even if it were present, would not be a factor that would lead the skilled person to see this option as preferred over any of the others.

- 1.6.5 Consequently, there is no clear pointer to the selection of the distinguishable color and/or colored pattern allowing a user to easily distinguish a front and a rear portion of the absorbent article from the three equally weighted options disclosed on page 20, lines 16 to 27.
- 1.6.6 In view of this conclusion, the exchange of opinions, both in writing and at oral proceedings, as to whether the inclusion of option A in claim 1 necessitated a combination of two different aspects of the alleged invention is not decisive for the decision and is thus not further addressed here.
- 1.7 At oral proceedings before the Board, the appellant referred to T 2255/12 and T 1269/06 which, it argued, held that the standpoint of the skilled person should be taken when assessing added subject-matter and that an over formalistic approach should be avoided in which more emphasis is given to the literal word content of the original application rather than the technical information that it conveys. The Board concurs with the findings in these decisions and does not see it as having taken an overly formalistic approach in the present case. However, in contrast to these cited decisions, the amendments made to claim 1 require three individual selections from lists of possible features to be made in combination. In the absence of a direct and unambiguous disclosure in the application as filed of this specific combination of features as part of the

claimed subject-matter, technically relevant information has unallowably been added to the original disclosure.

1.8 In conclusion of all the above, the subject-matter of claim 1 lacks a direct and unambiguous basis in the application as filed. The ground for opposition under Article 100(c) EPC is consequently prejudicial to maintenance of the patent as granted.

2. *Auxiliary requests 1 to 25*

2.1 *Article 123(2) EPC*

2.2 In its communication under Article 15(1) RPBA, the Board gave its preliminary opinion that none of the auxiliary requests seemed to overcome the added subject-matter objection and that the subject-matter of claim 1 of each request would thus at least fail to meet the requirement of Article 123(2) EPC.

2.3 At oral proceedings, the appellant did not wish to present any further arguments in support of auxiliary requests 1 to 25 and merely indicated that, in view of the Board finding that the subject-matter of claim 1 of the main request necessitated three selections from lists to be made, none of the amendments made to the auxiliary requests on file would overcome the objection under Article 123(2) EPC.

2.4 The Board thus confirms its preliminary opinion herewith, that the subject-matter of claim 1 of each of auxiliary requests 1 to 25 fails to meet the requirement of Article 123(2) EPC. Auxiliary requests 1 to 25 are thus not allowable.

3. The respondent's request to remit the case to the opposition division was conditional upon the Board finding a request overcoming the added subject-matter objection. However, with this condition not having been met, this request is moot.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

P. Cipriano

Decision electronically authenticated