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**Datasheet for the decision
of 8 May 2025**

Case Number: T 0839/23 - 3.2.06

Application Number: 17198067.5

Publication Number: 3292850

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

METHOD FOR PRODUCING COMPOSITE STRUCTURE

Patent Proprietor:

Drylock Technologies NV

Opponent:

Ontex BV

Headword:

Relevant legal provisions:

EPC Art. 100(c), 76(1)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0839/23 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 8 May 2025

Appellant: Drylock Technologies NV
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 April 2023
revoking European patent No. 3292850 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman T. Rosenblatt
Members: P. Cipriano
J. Hoppe

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. 3 292 850, which is derived from a divisional application based on European patent application No. 11 770 376.9 (from here on referred to as 'the earlier application as filed').
- II. With its statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or as an auxiliary measure that the patent be maintained in amended form on the basis of one of the auxiliary requests 1 to 34, filed with the statement of grounds of appeal.
- III. In its reply to the appeal, the respondent (opponent) requested that the appeal be dismissed.
- 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 appeared to be prejudicial to the maintenance of the patent.
- V. Oral proceedings were held before the Board, at the end of which the parties confirmed their requests as stated above.
- VI. Claim 1 of the main request, which corresponds to claim 1 as granted, and of auxiliary requests 1 to 16 reads as follows (in the auxiliary requests, amendments are made only to the dependent claims):

"1. A process for providing an absorbent structure comprising of a carrier layer, an intermediate absorbent material and an auxiliary layer, wherein the absorbent material is at least partly enclosed by the carrier layer and auxiliary layer, comprising the steps of:

- providing a moving carrier layer (101);
- positioning absorbent material in a desired pattern of absorbent material clusters on the moving carrier layer;
- covering the absorbent material with an auxiliary layer (102);

characterized in that the method further comprises:

- joining the carrier layer to the auxiliary layer to form the absorbent structure with the absorbent material clusters there between;
- prior to joining the carrier layer (101) to the auxiliary layer (102), altering the distribution of the absorbent material on the moving carrier layer through an airflow by blowing on at least one attachment area (2) from below the attachment area (2), in such a way as to decrease the amount of absorbent material at the position where the carrier layer and auxiliary layer are to be joined subsequently, and as to provide areas where substantially no absorbent material is present in between the absorbent material clusters in the absorbent structure; wherein the areas are intended to act as additional distribution and transport channel facilitating the flow of liquid away from the point of insult and toward the absorbent material clusters, wherein the airflow is created by at least one blowing orifice (40) situated below the attachment area (2) and at least one suction orifice (30) situated below the attachment area (2) on either side thereof."

VII. Claim 1 of auxiliary requests 17 to 32 differs from claim 1 of the main request only in that the feature "intermediate absorbent material" referred to in the preamble is modified to read "intermediate absorbent particulate material" (as is the case for auxiliary requests 1 to 16, the further amendments in the auxiliary requests 17 to 32 only concern the dependent claims).

VIII. Claim 1 of auxiliary request 33 differs from claim 1 of auxiliary requests 1 to 32 in that the last clause of the claim reads:

"wherein the airflow is created by at least one blowing hole (40) situated below the attachment area (2) and at least one suction hole (30) situated below the attachment area (2) on either side thereof."

IX. Claim 1 of auxiliary request 34 differs from claim 1 of auxiliary requests 1 to 32 in that the last clause of the claim reads:

"wherein the airflow is created by blowing holes (40) via at least one blowing orifice situated below the attachment area (2) and by suction holes (30) via at least one suction orifice situated below the attachment area (2) on either side thereof".

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

Main request - Article 100(c) EPC

Figure 16 in combination with page 54, lines 7-11 of the earlier application as filed implicitly disclosed orifices. The skilled person derived from the earlier

application as filed that each blowing hole and each suction hole inevitably had a corresponding orifice.

Consequently, the features of granted claim 1 "at least one blowing orifice" and "at least one suction orifice" had basis in Figure 16 in combination with page 54, lines 7-11 of the earlier application as filed.

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

Main request - Article 100(c) EPC

The combination of features of granted claim 1 could not be found in the earlier application as filed without combining specific parts of different embodiments of the earlier application as filed. An application was not a reservoir from which features pertaining to separate embodiments of the application could be combined in order to artificially create a particular embodiment.

The earlier application as filed disclosed, on page 54, lines 7-11 and with reference to Figure 16, blowing/suction "holes" which were distinct and not identical to a single blowing/suction "orifice". Holes and orifices were not the same thing, as could be derived from page 54, lines 21 to 24 and page 55, first paragraph of the earlier application as filed as well as from the corresponding Figures 18 and 19.

Figure 16 of the earlier application as filed did not disclose the features "at least one suction orifice" and "at least one blowing orifice". The passage on page 54, lines 7-11, of the earlier application as filed regarding Figure 16 disclosed blowing holes and suction

holes. However, even if it were agreed that each suction/blowing hole implicitly had a suction/blowing orifice, the features "at least one blowing orifice" and "at least one suction orifice" could not be derived from Figure 16.

None of the amendments made to claim 1 of auxiliary requests 17 to 34 overcame this objection.

Reasons for the Decision

1. Main request - Article 100(c) EPC

The Board confirms the conclusion of the opposition division in the impugned decision, according to which the subject-matter of claim 1 of the patent as granted extends beyond the content of the earlier application as filed.

1.1 Granted claim 1 defines *inter alia* that the airflow is created by at least one blowing orifice situated below the attachment area and at least one suction orifice situated below the attachment area on either side thereof.

1.2 The appellant argued that this feature had basis in Figure 16 in combination with page 54, lines 7-11 of the earlier application as filed. Although an orifice was not mentioned in this passage, it was clear for the skilled person from Figure 16 that each suction hole 30 was provided with a suction orifice and that each blowing hole 40 was provided with a blowing orifice. No

features other than the orifices were necessary to achieve the airflow.

- 1.2.1 The Board is not persuaded by these arguments. The passage cited by the appellant on page 54, lines 7-11 of the earlier application as filed does not explicitly describe "orifices". It only makes reference to "holes". Contrary to the appellant's argument, Figure 16 referred to in this section also does not show such orifices.

Whilst the Board agrees that the skilled person would understand that each suction/blowing hole disclosed in the Figure 16 embodiment must be provided with some orifice for an airflow to be established, the skilled person also understands from the remaining parts of the description that holes and orifices are distinct entities or structures, as also argued by the respondent. This is explicitly disclosed, for example, in the description of the embodiments of Figures 17 and 18 ("blowing holes with blowing orifices" on page 54, line 22, or "[b]lowing holes 40 provide a blowing flow 41 via a blowing orifice 42" on page 54, lines 13-14). The different reference numbers point to different features in the respective figures, thus underlining that a respective hole is distinct from the corresponding orifice. A similar distinction of orifices and holes is also implicitly accepted by the appellant in its annotated drawing based on Figure 16 of the earlier application as filed, reproduced in the statement of grounds of appeal.

All the cited embodiments of the earlier application as filed disclose "holes". And as explained above, orifices are not disclosed independently from these holes but rather as part of the respective holes. Thus,

the skilled person would not directly and unambiguously derive the existence of suction/blowing orifices from the earlier application as filed without the explicitly disclosed corresponding suction/blowing holes. However, blowing holes and suction holes are not defined in claim 1 of the main request.

1.2.2 The Board agrees with the appellant's argument that the earlier application as filed does not disclose blowing holes with blowing orifices only in combination with a protruding part, as considered by the opposition division. However, the passage on page 34, lines 12-19, to which the appellant further referred in support of its argument, does not mention "orifices". It also only refers to "holes", such that it cannot provide a basis for defining only orifices without the respective hole in claim 1 of the main request.

1.2.3 Already for this reason the subject-matter of claim 1 of the main request extends beyond the content of the earlier application as filed.

1.3 In addition, the Board finds that, even if the embodiment described in the context of Figure 16 of the earlier application as filed implicitly discloses the presence of some orifice, there is no disclosure in the embodiment of Figure 16 specifically for the features "at least one blowing orifice" and "at least one suction orifice".

1.3.1 The appellant argued that it would be clear that each suction hole 30 was provided with a suction orifice and that each blowing hole was provided with a blowing orifice, as the skilled person would derive this from Figure 16 of the earlier application as filed.

The Board does not accept this argument. As set out above, Figure 16 and its corresponding description on page 54 do not explicitly disclose orifices. Figure 16 is a cross-sectional schematic illustration of an attachment process using airflows in combination with blowing and suction holes according to an embodiment of the invention (see page 17, lines 20 to 22 of the description of the earlier application as filed). From this cross-sectional view, no orifices can be recognized (although some orifice must exist as concluded above) such that the skilled person cannot derive anything from Figure 16 regarding the number of orifices that each suction or blowing hole has.

Further, in order to provide areas (plural) where substantially no absorbent material is present in between the absorbent material clusters in the absorbent structure, as defined in claim 1, more than one blowing orifice and one suction orifice are required, depending on the shape of the areas and of the material clusters.

In the absence of any explicit disclosure of suction or blowing orifices in Figure 16 and in the corresponding part of the description on page 54, the skilled person could not directly and unambiguously derive how many blowing and suction orifices are situated below the attachment area nor, more specifically, how many orifices each suction or each blowing hole has. Figure 16 and the corresponding part of the description thus does not provide a direct and unambiguous disclosure of *at least one* blowing orifice or for *at least one* suction orifice. The number of orifices in the embodiment of Figure 16 is undetermined and is not necessarily one or more than one. Also for this reason, the feature indicated above in point 1.1 introduces

subject-matter extending beyond the content of the earlier application as filed.

- 1.4 The ground for opposition pursuant to Article 100(c) EPC therefore prejudices maintenance of the patent. Consequently, the main request is not allowable.
2. Auxiliary requests 1-34 - Article 76(1) EPC
 - 2.1 The Board stated in point 2.2 of its preliminary opinion that none of the auxiliary requests 1 to 34 seemed to "overcome all the objections raised above against claim 1 of the main request, let alone only the objection considered under, for example, points 1.5 to 1.7 above". Points 1.5 to 1.7 of the preliminary opinion concern the features "at least one blowing orifice" and "at least one suction orifice" discussed above for the main request.
 - 2.2 The appellant did not reply to this opinion in writing and in the oral proceedings also did not wish to submit further comments in regard to the auxiliary requests after the Chairman had stated that preliminarily the same conclusion as for the main request seemed to apply to all further auxiliary requests.
 - 2.3 The Board therefore has no reason to deviate from its provisional opinion, which is consequently confirmed herewith.
 - 2.4 Since none of the amendments made to claim 1 of auxiliary requests 1 to 34 fulfils the requirement of Article 76(1) EPC, auxiliary requests 1 to 34 are not allowable.

3. In the absence of any request which meets the requirements of the EPC, the proprietor's appeal is dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

T. Rosenblatt

Decision electronically authenticated