Internal distribution code:

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

Datasheet for the decision of 23 April 2026

Case Number: T 1960/23 - 3.2.04

Application Number: 19218948.8

Publication Number: 3711730

IPC: A61F13/475, A61F13/532, A61F13/533, A61F13/42, D04H1/54, D04H3/005, A61F13/15

Language of the proceedings: EN

Title of invention:
ABSORBENT ARTICLES AND METHODS OF MAKING

Patent Proprietor:
Ontex BV
Ontex Group NV

Opponents:
Essity Hygiene and Health Aktiebolag
Drylock Technologies NV

Headword:

Relevant legal provisions:
EPC Art. 100(a), 54, 56, 111(1)
RPBA 2020 Art. 11

Keyword:
Novelty - main request (yes)
Inventive step - main request (no) - auxiliary requests 1, 1A and 4 (no)
Remittal to the department of first instance - (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 1960/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 23 April 2026

Appellant: (Patent Proprietor 1)	Ontex BV Genthof 5 9255 Buggenhout (BE)
Appellant: (Patent Proprietor 2)	Ontex Group NV Korte Keppestraat 21 9320 Erembodegem (BE)
Representative:	Wall, Leythem Oxon IP B.V. Evert Van De Beekstraat 354 1118 CZ Schiphol (NL)
Appellant: (Opponent 1)	Essity Hygiene and Health Aktiebolag 405 03 Göteborg (SE)
Representative:	Essity Hygiene and Health AB Essity IP Department 405 03 Göteborg (SE)
Appellant: (Opponent 2)	Drylock Technologies NV Spinnerijstraat 12 9240 Zele (BE)
Representative:	Arnold & Siedsma Bezuidenhoutseweg 57 2594 AC The Hague (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 16 October 2023 concerning maintenance of the European Patent No. 3711730 in amended form.**

Composition of the Board:

Chairman	A. Pieracci
Members:	P. Cipriano
	K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The patent proprietor and opponent 2 filed appeals against the interlocutory decision of the opposition division which found that European patent No. 3 711 730 in an amended form met the requirements of the EPC.

II. The appellant-proprietor (proprietor) requested that the decision under appeal be set aside and that the patent be maintained according to the main request or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 23 or 1A, 6A, 8A, 10A, 11A, 12A, 14A, 15A, 18A, 20A, 21A or 23A, all filed with the grounds of appeal.

III. Appellant-opponent 2 (opponent 2) requested that the decision under appeal be set aside and that the patent be revoked.

IV. The following documents are relevant to the present decision:
D2 US 5 433 715
D11 CN 106999317 A and its English translation D11a

V. The parties were summoned to oral proceedings before the Board.

VI. In a subsequent communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the Board informed the parties of its provisional opinion on the case.

VII. Oral proceedings before the Board were held on 23 April 2026, during which the proprietor withdrew auxiliary requests 2, 3, 6 to 23 and auxiliary requests

6A, 8A, 10A, 11A, 12A, 14A, 15A, 18A, 20A, 21A and 23A. The proprietor also requested remittal during the oral proceedings.

At the close of the oral proceedings, the requests were the following.
- The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained according to the main request or, in the alternative, according to one of auxiliary requests 1, 1A and 4. As an auxiliary measure, it requested remittal of the case to the opposition division for further prosecution before auxiliary request 4 be dealt with.

- The appellant (opponent) maintained its initial request.

VIII. Claim 1 of the main request (as granted) reads as follows (as reproduced on pages 7 and 8 of the appealed decision):
"1.1 An absorbent article (10, 20, 300, 500, 600) comprising an absorbent core (101,501,601) sandwiched between a liquid permeable topsheet (520,620) and a liquid impermeable backsheet (521,621), and

1.2 an acquisition distribution layer (201,522,622) positioned between said topsheet (520,620) and said absorbent core (101,501,601), wherein

1.3 the absorbent core (101, 501, 601) comprises absorbent material selected from the group consisting of cellulose fibers, superabsorbent polymers and combinations thereof, wherein

1.4 said absorbent core (101, 501,601) comprises at least one core wrap substrate enclosing said absorbent material, and

1.5 wherein a top layer of said core wrap is adhered to a bottom layer of said core wrap to form one or more channels (106) substantially free of said absorbent material, wherein

1.6 said channels (106) have a length extending along a longitudinal axis (48) and the absorbent core (101, 501, 601) has a length extending along said longitudinal axis (48) and wherein the length of said channels (106) is from 10% to 95% of the length of said absorbent core (101, 501, 601) and

1.7 wherein said channels each follow a substantially continuous path such as from a first end of a channel to a second end of the same channel characterized in that

1.8 the acquisition distribution layer (522, 622) comprises a spunbond and/or carded nonwoven layer comprising synthetic fibers, wherein

1.9 said synthetic fibers are comprised at a level of greater than 80%wt by weight of said acquisition distribution layer (522, 622), and

1.10 wherein said acquisition distribution layer (522, 622) has a basis weight of from 10 to 50 g/m^2 and in that

1.11 the acquisition distribution layer (522, 622) is positioned at a body-facing side of the absorbent

core (101, 501, 601), and in contact with the body-facing side of the absorbent core (101, 501,601)."

IX. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that feature 1.10 was amended to the following wording:
"and wherein said acquisition distribution layer (522, 622) has a basis weight of from 18 to 35 g/m^2"

X. Claim 1 of auxiliary request 1a differs from claim 1 of auxiliary request 1 in that feature 1.10 was amended to the following wording:
"and wherein said acquisition distribution layer (522, 622) has a basis weight of from 20 to 30 g/m^2"

XI. Claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the following features were appended at the end of the claim:
"wherein the top layer of said core wrap is adhered to a bottom layer of said core wrap, along said channels (106), at a plurality of discrete joining areas, wherein said joining areas form a pattern consisting of elongated oblique members (1061) having an angle α from the longitudinal axis (48), wherein said angle α is greater than 0° and less than 90°, and wherein said discrete joining areas are free of adhesive and comprise mechanical bonds."

XII. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision below.

Reasons for the Decision

1. Main request - Article 100(a) EPC (Article 54 EPC)

1.1 The proprietor argued that D2 did not disclose features 1.6, 1.7 and 1.11. It was not contested that D2 disclosed the remaining features of D2.

1.2 The Board agrees with the proprietor that feature 1.6 is not disclosed in D2 but finds that features 1.7 and 1.11 are disclosed.

1.2.1 Figure 13 of D2 discloses secondary attachments 122 configured as straight lines extending along the longitudinal axis of the absorbent article. These secondary attachments 122 attach the carrier layers 98 and 100 together to build channel regions 86 which necessarily have the same length as the secondary attachment zones 122. Even if D2 discloses that the attachment zones 122 could be configured in ways other than lines, as disclosed in lines 35 to 37 of column 22 of D2, the skilled person would directly and unambiguously derive from the straight longitudinal lines shown in Figure 13 that the resulting channels are linear and continuous, as is also the case, for example, in claim 17 of the contested patent. The skilled person would further derive from Figure 13 that these channels do not extend up to the edges of the absorbent laminate 112 but that each channel follows a substantially continuous path such as from a first end of a channel to a second end of the same channel, as defined in feature 1.7.

1.2.2 Regarding feature 1.6 and contrary to the argument of the proprietor, the absorbent core in D2 does not correspond only to the area of the absorbent laminate 112 comprising the pockets 108 filled with absorbent material 110. D2, column 4, lines 30 to 35, explains that the absorbent structure 32 includes a retention portion 48 having the (whole) absorbent laminate 112. The skilled person reading D2 would therefore consider that the absorbent core also comprises carrier layers 98 and 100, which wrap the pockets 98 and build a peripheral area extending longitudinally beyond the area of the pockets 108. The skilled person would therefore derive from Figure 13 that the channel length is less than 100% of the length of the absorbent core and not more than 100%, as the proprietor argued.

However, a specific length value cannot be directly and unambiguously derived from Figure 13. It is not excluded that the length of the channels is, for example, 96% of the length of the absorbent core, and not up to 95% as claimed. Feature 1.6 is therefore not directly and unambiguously disclosed in D2.

1.3 The proprietor argued that there was no description of contact between the absorbent core and the surge management portion 46 of Figure 4 of D2. According to the proprietor, only "liquid communication" between the absorbent retention portion and surge management portion 46 was described (e.g. D2, column 29, last two paragraphs).

This argument is not persuasive. As explained above in point1.2.2, the absorbent core also comprises carrier layers 98 and 100, and not only the pockets of absorbent material. As shown in Figure 4 of D2, the surge management portion 46 is directly above and in

contact with carrier layer 98 and therefore corresponds to an acquisition and distribution layer (ADL) as defined in feature 1.11 of claim 1. Consequently, feature 1.11 is also disclosed in D2.

1.4 The proprietor further argued that several selections were necessary to arrive at the combination of features of claim 1. According to the proprietor, it was necessary to perform a first selection and choose the absorbent structure arrangement of Figure 4 from among the absorbent structures of Figures 2, 4 and 8, which showed different layer arrangements. It was also necessary to perform a second selection and select the absorbent laminate 112 of Figures 13 and 14 from among the different absorbent laminates disclosed in D2. A third and a fourth selection were required to arrive respectively at the specific material and basis weight of the ADL as defined in features 1.8 and 1.10 from the possible materials disclosed in column 29, lines 18 and 19, and basis weights disclosed in column 31, for example in line 50.

The Board is not persuaded that such a large number of selections is necessary. The choice of a starting general disclosure in the prior art such as the absorbent structure embodiment of Figures 1 and 4 does not correspond to a selection from a list but to the identification of the embodiment of D2 taken into consideration. The first selection necessary is to combine the absorbent structure embodiment of Figure 4 with the absorbent laminate 112 of Figures 13 and 14 from among the various possible absorbent laminates disclosed. The arguments of the proprietor did not persuade the Board that the decision of the opposition division was not correct on this aspect. The embodiment

of Figures 1 and 4 is therefore linked with that of Figures 13 and 14to form a single disclosure.

The Board, however, concurs with the proprietor that several different possibilities for the material and basis weight of the ADL are disclosed in D2 such that a further selection is necessary to arrive at the combination of features of claim 1. A second selection would be necessary to choose the "another example" in column 31, lines 58 to 62, of D2 (a bonded carded web having a basis weight of about 50 g/m^2, which includes a mixture of polyester (PET) single-component fibres and PET/polyethylene bicomponent fibres) as a material for the surge management portion 46 disclosed and thus arrive at features 1.8 and 1.10. Two unrelated choices are therefore necessary to arrive at the combination of features 1.1 to 1.5 and 1.7 to 1.11 of claim 1 containing features 1.8 and 1.10, so this combination of features is not directly and unambiguously derivable from D2.

1.5 The subject-matter of claim 1 is therefore novel over D2 since feature 1.6 is not unambiguously disclosed in D2, and the remaining features are not disclosed in combination.

2. Main request - Article 100(a) EPC (Article 56 EPC)

2.1 As explained above in point 1.4, the embodiment of Figures 1 and 4 builds a single disclosure with that of Figures 13 and 14. This disclosure, however, does not contain features 1.6, 1.8 and 1.10.

2.2 The proprietor argued that the combination of the ADL's basis weight and channel length defined in claim 1 optimised the average acquisition time (AAT) and the

rewet parameters of the ADL, as confirmed in paragraphs [0298] (Example 2/Table 2) and [0302] (Example 6/Table 4) of the patent, and that the objective problem was thus to provide an absorbent article with good acquisition speed and the rewet performance. According to the proprietor, D2 did not address these problems.

The Board is not persuaded by these arguments. The examples in paragraphs [0298] and [0302] do not confirm any additional effect for features 1.6, 1.8 and 1.10. All the diapers used in the samples A', B' and C' used in Examples 2 and 4 have a single U-shaped channel and therefore not the shape as defined in feature 1.6 (and 1.7). The samples A', B' and C' are also made of different materials, and all three samples have a basis weight within the range defined in feature 1.10, such that no meaningful comparison can be made with examples outside the claimed range that could demonstrate any benefit associated with the range claimed in feature 1.10.

The proprietor has not presented any further effects, common or individual, for the distinguishing features, and the Board cannot identify any either. Consequently, there is no technical effect achieved by all the distinguishing features in combination (i.e. there is no synergy between the features), such that the formulation of partial problems is appropriate.

2.3 As regards feature 1.6, a length of the channels from 10 to 95% of the length of the absorbent core does not present any advantageous technical effect over the (unknown) channels' length disclosed in Figure 13 of D2. The partial objective problem solved by feature 1.6 is thus considered to be how to provide a suitable

length for the channels of D2 when implementing the embodiment disclosed in D2.

2.4 The proprietor argued that Figure 13 of D2 disclosed a channel length of more than 100% and that there would be no reason for the skilled person to reduce the channel length to a value below 100% of the length of the absorbent core as defined in feature 1.6.

The Board does not agree. As discussed above in point 1.2.2, the length of the absorbent core corresponds to the length of the carrier layers 98 and 100 such that the skilled person cannot derive a channel length from Figure 13. However, the skilled person derives that the channel length is less than 100% of the length of the absorbent core since the channels run straight along the core's longitudinal axis and do not extend up to its edges.

However, contrary to the proprietor's arguments, a channel length between 10 and 95% of the absorbent core's length is nothing more than a design choice for the skilled person searching for a suitable channel length. The skilled person knows that a short channel length does not achieve proper guidance/distribution of fluids along the whole absorbent core and that a long channel length close to the length of the core increases the risk of spilling the fluids over the absorbent core's longitudinal edges. Such a design choice therefore lies within the normal practice of a skilled person, who would have arrived at a channel length value within the (broad) claimed range merely by applying routine design measures.

2.5 As regards features 1.8 and 1.10 and as explained above, there is also no effect associated with the ADL

materials and basis weight range defined in features 1.8 and 1.10. The partial objective problem solved by these features is thus considered to be how to provide a suitable material for the ADL when willing to put the embodiment of D2 into practice.

2.6 D2, column 31, lines 57 to 62, already discloses an example of a bonded carded web having a basis weight of about 50 g/m^2 and including a mixture of PET single-component fibres and PET/polyethylene bicomponent fibres as a suitable material for the surge management portion (which corresponds to the ADL of the invention).

2.7 The proprietor argued that there would be no reason for the skilled person to choose this specific example from among the possible materials disclosed in D2. However, if D2 discloses several possible materials for the ADL, the skilled person would not require any particular incentive to choose a particular one when simply looking for a suitable material without any specific requirement besides its suitability. In accordance with the Board's case law (see Case Law of the Boards of Appeal of the EPO, 11th edn., 2026, I.D.9.21.9.b), the fact that there were other options has no bearing on the obviousness of one specific option. If all options are equally likely, the invention merely results in an obvious and consequently non-inventive selection among a number of known possibilities.

The skilled person looking for a suitable material for the ADL starting from the embodiment of Figures 1, 4, 12 and 14 of D2 would thus choose the material disclosed in column 31, lines 57 to 62, and arrive at an ADL as defined features 1.8 and 1.10 of claim 1 in an obvious manner.

2.8 The subject-matter of claim 1 of the main request does not involve an inventive step under Article 56 EPC when starting from the embodiment of Figures 1, 4, 13 and 14 of D2 and taking into consideration the whole teaching of D2. The ground for opposition under Article 100(a) EPC does therefore prejudice maintenance of the patent as granted. The main request is not allowable and, consequently, the appeal of the proprietor cannot be allowed.

3. Auxiliary request 1 - Article 56 EPC

3.1 Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the basis weight range in feature 1.10 was amended to a more specific basis weight of from 18 to 35 g/m^2.

3.2 The proprietor argued that the amended basis weight range in combination with the channel length defined in feature 1.6 optimised the average acquisition time (AAT) and the rewet parameters of the ADL, as confirmed in paragraphs [0298] (Example 2/Table 2) and [0302] (Example 6/Table 4) of the patent, and that the objective problem was thus to provide an absorbent article with good acquisition speed and the rewet performance.

For the same reasons as for the main request, the Board is not persuaded by these arguments. Although a basis weight of 50 g/m^2 now falls above the claimed range such that sample A' serves as a comparative example for samples B' and C', all the samples are still made of different materials, the shape of the samples' channels is not the same as the one defined in claim 1, and there is still no comparative example showing the

effectiveness of the examples according to the invention with regard to values below the claimed range.

3.3 Consequently, there is no technical effect achieved by all the distinguishing features in combination, such that the formulation of partial problems remains appropriate, as for the main request.

3.4 Since there is no change regarding feature 1.6, a channel length between 10 and 95% of the absorbent core's length is nothing more than a design choice for the skilled person searching for a suitable channel length for the same reasons as discussed above in point 2.4 for the main request.

3.5 As regards features 1.8 and 1.10, there is also no effect associated with the ADL materials and the amended range of basis weight defined in features 1.8 and 1.10, such that the partial objective problem solved by these features remains how to provide a suitable material for the ADL.

3.6 The proprietor argued that D2 provided two clear pointers in column 31, lines 57 to 62, and in column 34, lines 53 to 59, to a basis weight value of 50 g/m^2, and thus would lead the skilled person away from the claimed range. According to the proprietor, a passage in column 34, lines 63 to 65, also explained that low basis weights could result in excessive pooling of liquid against the wearer's skin or excessive run-off of liquid, such that the skilled person would not be led to values below the suggested value of 50 g/m^2.

The Board does not agree. The skilled person is trying to solve the partial problem of providing a suitable

material for the ADL. Even if column 34, line 57, states that a range from 45 to 55 g/m^2 provides improved effectiveness, the skilled person is not faced with this task as the objective problem. According to the teaching of D2, the basis weight of the surge management portion may take any value within the range of about 17 to 102 g/m^2 (see column 31, lines 15 to 17) or, in various embodiments, in the range of at least 24 g/m^2 (see column 34, lines 44 to 46). Consequently, values lower than 50 gsm and within the claimed range cannot be disregarded but must instead be considered suitable in view of the teaching of D2.

Also, the passage in column 34, lines 44 to 46, would not hinder the skilled person in using values lower than 50 g/m^2 since the skilled person would recognise that a "too low" basis weight refers to basis weight values below the suitable ones mentioned in the paragraph above. Otherwise, the teaching of D2 would not make sense as a whole and would disclose some values as suitable in certain passages and unsuitable in others.

3.7 D2, column 34, lines 44 to 46, discloses a basis weight for the surge management portion of at least about 24 g/m^2 for "the various embodiments of the invention". Consequentially, the skilled person looking for a suitable material for the ADL would also consider a basis weight of 24 g/m^2 suitable for the ADL material of all the embodiments of D2 and in particular also for the one discussed above resulting from the combination of Figures 1, 4, 13 and 14, which would then be an obvious choice for the person skilled in the art.

3.8 The subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step under Article 56 EPC

when starting from the embodiment of Figures 1, 4, 13 and 14 of D2 and taking into consideration the whole teaching of D2. Auxiliary request 1 is therefore not allowable.

4. Auxiliary request 1a - Article 56 EPC

4.1 Claim 1 of auxiliary request 1a differs from claim 1 of auxiliary request 1 in that the basis weight range in feature 1.10 was amended to a more specific basis weight of from 20 to 30 g/m^2.

4.2 During the oral proceedings, the proprietor did not make any further submissions and only referred to its written submissions.

4.3 The proprietor argued in writing that this amendment further delimited the request over the prior art and even more closely aligned the request to the best performing patent examples (21 and 30 g/m^2 basis weights).

These arguments are not persuasive. As opponent 2 argued in point 49 of its reply to the proprietor's grounds of appeal, the arguments for auxiliary request 1 also apply for an acquisition layer having a basis weight of 20 to 30 g/m^2 instead of 18 to 35 g/m^2.

4.4 In the absence of any effect resulting from the more restricted range and given that it was already found above to be obvious to arrive at a basis weight value of 24 g/m^2 and that 24 g/m^2 is also within the range of 20 to 30 g/m^2 defined in feature 1.10 of auxiliary request 1A, the reasons given for auxiliary request 1 apply here *mutatis mutandis*.

4.5 The subject-matter of claim 1 of auxiliary request 1a does not involve an inventive step under Article 56 EPC when starting from the embodiment of Figures 1, 4, 13 and 14 of D2 and taking into consideration the whole teaching of D2. Auxiliary request 1a is not allowable.

5. Request for remittal

5.1 During the oral proceedings, the proprietor requested that the case be remitted to the opposition division for further prosecution.

5.2 Under Article 11 RPBA, the Board is not to remit a case to the department whose decision was appealed for further prosecution unless special reasons present themselves for doing so.

5.3 The proprietor argued that auxiliary request 4 had not been considered in the first-instance proceedings, but the Board does not find this to be a special reason as required under Article 11 RPBA.

It is the Boards' settled case law that parties do not have a fundamental right to have their cases examined at two levels of jurisdiction (see Case Law of the Boards of Appeal of the EPO, 11th edn., 2026, V.A. 9.2.1). Although the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (see Article 12(2) RPBA), there is no absolute right to have every issue decided at two levels of jurisdiction.
The parties had ample opportunity, at least during the written phase of the appeal proceedings, to develop their arguments to an extent enabling the Board to decide on the inventive-step objections to auxiliary

request 4, thus maintaining a procedurally economic outcome of the case.

5.4 The Board therefore exercised its discretion in refusing the request that the case be remitted for further prosecution (Article 111(1) EPC).

6. Auxiliary request 4 - Article 56 EPC

6.1 Claim 1 of auxiliary request 4 differs from claim 1 of the main request in that the following features were appended at the end of the claim (see also point XI above):
- wherein the top layer of said core wrap is adhered to a bottom layer of said core wrap, along said channels (106), at a plurality of discrete joining areas
- wherein said joining areas form a pattern consisting of elongated oblique members (1061) having an angle α from the longitudinal axis (48), wherein said angle α is greater than 0° and less than 90°
- wherein said discrete joining areas are free of adhesive and comprise mechanical bonds

6.2 It was not contested that D2 does not disclose the added features. The Board also sees no reason to find otherwise.

6.3 The proprietor argued that the added features allowed for a permanent bonding of the top and bottom layers of the core wrap without the use of hydrophobic substances, such as adhesives, thus improving fluid flow through the channels. According to the proprietor, the added features also improved contact between the ADL and the skin-facing layer of the top core wrap, and both these effects were confirmed by paragraph [0130] of the contested patent.

6.3.1 The Board is not convinced by these arguments. To determine the objective technical problem, the technical results and effects achieved by the claimed invention owing to these features and in comparison with the closest prior art must be assessed. These effects need not coincide with those stated in the patent. The only factor relevant to determining the problem objectively is the result actually achieved in relation to the closest state of the art.

6.3.2 Contrary to the arguments of the proprietor, the Board cannot see how the absence of adhesive in the discrete joining areas improves the fluid flow. As opponent 2 argued, it would appear, to the contrary, that the presence of a hydrophobic substance might even create less surface resistance to the water flow in the channel direction and thus possibly even improve fluid circulation.
As opponent 2 argued, the Board also fails to see how the definition of discrete joining areas between the layers of the core wrap at the bottom of the channels can improve contact between the ADL and the skin-facing layer of the top core wrap.

6.3.3 It rests with the proprietor to properly demonstrate that the purported advantages of the claimed invention have successfully been achieved (see Case Law of the Boards of Appeal of the EPO, 11th edn., 2026, I.D.4.2), and the proprietor has not convincingly demonstrated the purported effects, which therefore are not found credible by the Board.

6.4 In the absence of any effect, the Board agrees with opponent 2 that the partial objective problem solved by

the added features is to implement a suitable attachment between the core wraps to form the channels.

6.5 D11, Figure 7(c), already discloses a core wrap 42 bonded to form channels 43 using discrete joining areas which form a pattern consisting of elongated oblique joined/joining/bonding portions 8 having an angle from the longitudinal axis, with this angle being greater than 0° and less than 90°. In addition, the third paragraph on page 6 of D11a discloses that these joined/joining/bonding portions 8 may be formed by welding or pressure-bonding without using an adhesive.

6.6 The proprietor argued that D11 dealt with eliminating rigidity and did not disclose an ADL or refer to an improved contact such that the skilled person would not take it into consideration to solve the problem posed.

6.6.1 However, the Board does not agree. D11 relates to absorbent articles, such as disposable diapers, having the same construction as those of the contested patent. While the general purpose of D11 does relate to increasing softness and flexibility of absorbent articles so that they do not break, D11 discloses joined/joining/bonding portions 8 with an appropriate strength and flexibility when addressing these issues. Therefore, the skilled person looking to implement a suitable attachment between the core wraps to form the channels would take D11 into consideration since it relates to absorbent articles with a similar construction and compatible/suitable joining areas.

6.6.2 Faced with the less ambitious objective problem of implementing a suitable attachment between the core wraps to form the channels, the skilled person would adopt the welded or pressure-bonded joined/joining/

bonding portions 8 disclosed D11 and arrive at the subject-matter of claim 1 in an obvious way.

While it is true that D11 does not disclose an absorbent article having an ADL (see Figures 1 and 2 of D11), the skilled person would not consider eliminating or modifying the ADL of the starting point D2 (the surge management portion 46) when applying the teaching of D11 as the presence and positioning of the ADL in the absorbent article shown in Figures 1 and 4 of D2 has no effect on the joining of the core wraps and the channel formation.

6.7 The subject-matter of claim 1 of auxiliary request 4 does not involve an inventive step under Article 56 EPC when starting from the embodiment of Figures 1, 4, 13 and 14 of D2 and taking into consideration the whole teaching of D2 and D11. Auxiliary request 4 is not allowable.

7. In conclusion, the Board holds that the subject-matter of claim 1 of the main request, auxiliary request 1, auxiliary request 1a and auxiliary request 4 does not involve an inventive step. Since none of the proprietor's requests is allowable, the patent must be revoked.

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:

G. Magouliotis A. Pieracci

Decision electronically authenticated