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**Datasheet for the decision
of 9 October 2025**

Case Number: T 2041/23 - 3.2.04

Application Number: 18709622.7

Publication Number: 3595603

IPC: A61F13/15, A61F13/532,
A61F13/534, B28B1/26, B28B7/00

Language of the proceedings: EN

Title of invention:
MOULD FOR FORMING AN ABSORBENT CORE FOR AN ABSORBENT ARTICLE

Patent Proprietor:
Ontex BV
Ontex Group NV

Opponent:
Schöpf, Patrick

Headword:

Relevant legal provisions:
EPC Art. 54
RPBA 2020 Art. 12(3), 12(5), 13(1)

Keyword:

Novelty - (no)

Substantiation - auxiliary requests (no)

Amendment to appeal case - amendment detrimental to procedural economy (yes)

Decisions cited:

T 1128/21, T 1220/21

Catchword:



Beschwerdekammern

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Case Number: T 2041/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 October 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 October 2023 concerning maintenance of the
European Patent No. 3595603 in amended form.**

Composition of the Board:

Chairman	M. Dorfstätter
Members:	M. Hannam
	S. Ruhwinkel

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 3 595 603 in an amended form met the requirements of the EPC. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- II. The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 8 filed with its reply to the grounds of appeal.
- III. The following document is relevant to the present decision:

D2 EP-A-3 342 386
- IV. With its submission of 12 February 2025, the appellant argued that the auxiliary requests lacked the required substantiation and should not be admitted. It further reasoned a lack of novelty and inventive step with respect to each of the auxiliary requests 1 to 8.
- V. In its response in a submission of 14 April 2025, the respondent provided a more detailed substantiation for auxiliary requests 1 to 8 with respect to clarity, novelty and inventive step.
- VI. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the main request seemed not to be allowable and that the

auxiliary requests might not be admitted.

VII. In its submission of 13 August 2025, the respondent presented arguments as to why at least auxiliary requests 1, 3 and 5 to 8 should be admitted.

VIII. Oral proceedings were held before the Board on 9 October 2025, at the close of which the parties' requests remained as indicated above.

IX. Claim 1 of the main request reads as follows:

A mould for forming an absorbent core for an absorbent article, the mould comprising:

- i. a mould cavity (60) being bounded by at least one exterior surface (62) defining the contour of the absorbent core and a bottom air permeable base surface (63), and
- ii. a three-dimensional shaping profile member (61) within the mould cavity (60), wherein the shaping profile member (61) and the air permeable base surface (63) are engaged via interlocking elements (70, 71), wherein the shaping profile member (61) comprises at least one rib (65, 66, 67, 68, 69), and each rib comprises at least two interlocking male elements (70).

A recitation of the wording of claim 1 of each of auxiliary requests 1 to 8 is not necessary for the present decision.

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

Main request

The subject-matter of claim 1 lacked novelty over D2. Fig. 15A and paragraph [0150] disclosed a mould in

which a 3D insert was positioned, the insert corresponding to the claimed shaping profile member. From Fig. 15A it was evident that the 3D insert comprised at least one rib. This mould structure broadly reflected a very similar arrangement to that of the Fig. 9 embodiment of the patent, such that Fig. 15A disclosed the claimed feature 'wherein the shaping profile member comprises at least one rib'. Fig. 15A also clearly depicted wires securing the rib to the perforated mould base, the wires forming male elements which interlocked with perforations in the mould base. The wires interacting with the perforations satisfied the definition of 'interlocking male elements' in paragraph [0119] of the patent. Even if not described as such, the skilled person would unambiguously deduce that these wires were fixing elements for the 3D insert. Neither claim 1 nor any passage of the description of the patent disclosed that the word 'comprises' required the rib to be integrally formed with the at least two interlocking male elements. Details from the Fig. 8 embodiment of the patent, or indeed any part of the description, should not be used to limit the interpretation of what claim 1 unambiguously disclosed. The wires securing the 3D insert thus anticipated the claimed feature 'each rib comprising at least two interlocking male elements'.

Auxiliary requests

These should not be admitted. With the reply to the grounds of appeal, the auxiliary requests were insufficiently substantiated insofar as all the arguments in support of the individual requests' allowability was not provided. The extent of this substantiation merely repeated what had been provided before the opposition division. Concrete objections to the auxiliary requests on file before the opposition

division had already been raised in the opponent's submission of 26 July 2023; these could and should have been addressed already with the filing of the auxiliary requests on appeal. However, no such detailed arguments were included in the reply to the grounds of appeal. The substantiation provided with submission of 14 April 2025 was late filed.

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

Main request

The subject-matter of claim 1 was novel over D2. Fig. 15A should not be considered as disclosing the claimed shaping profile member since the dimensions of the 3D insert in Fig. 15B more accurately matched those of Fig. 9 of the patent. The 3D insert of Fig. 15A was not necessarily a single item since black markings on each of the mould frame and the insert suggested a multi-part insert.

The wires depicted in Fig. 15A of D2 did not unambiguously secure the 3D insert to the perforated mould base. This was certainly not explicitly disclosed in D2. The insert could reasonably require welding or gluing into position. The wires could also reasonably be for reinforcement of the rib. The perforated mould base was for allowing the mould to be placed under vacuum. The holes formed by the perforations were not 'female' elements as the wires would not interlock with mere holes. Such an arrangement would also not allow the 3D insert to be accurately positioned in the mould. The wires were also not comprised in the 3D insert, which required an integral relationship. From the patent as a whole, particularly the embodiment of Fig. 8, the skilled person would understand that only an integral arrangement of the rib with the interlocking

male elements was intended, which the wires of Fig. 15A of D2 did not achieve. Paragraphs [0121] and [0156] further supported this understanding.

Auxiliary requests

These should be admitted. The proprietor had reacted in a timely and appropriate manner at each stage of the opposition and appeal proceedings. No objection to the substantiation of the auxiliary requests had been raised by the opposition division, it even providing a preliminary opinion on them. In the reply to the grounds of appeal the substantiation was short but sufficient. The distinguishing features of each request were identified whilst the technical effect of these features and their basis in the patent were indicated. In the absence of concrete objections to the auxiliary requests on file, this substantiation was appropriate and sufficient. Objections to the auxiliary requests were first filed with the submission of 12 February 2025 whereupon a full rebuttal and substantiation of the auxiliary requests was provided with submission of 14 April 2025. This was the first occasion at which such detailed substantiation was necessary. The appellant had sufficient time to respond to this submission such that no unfair advantage had been granted the respondent. The number of auxiliary requests on appeal had also been reduced relative to those on file before the opposition division, thus contributing to procedural economy.

Reasons for the Decision

1. *Main request*

Novelty, D2

- 1.1 The subject-matter of claim 1 lacks novelty over D2.
- 1.2 D2 discloses (see paragraph [0150] and Fig. 15A) a mould for forming an absorbent core for an absorbent article (see paragraph [0016]), the mould comprising:
 - i. a mould cavity (depicted in Fig. 15A) being bounded by at least one exterior surface defining the contour of the absorbent core and a bottom air permeable base surface (perforated bottom surface of mould in Fig. 15A), and
 - ii. a three-dimensional shaping profile member (3D insert; see paragraph [0150]) within the mould cavity, wherein the shaping profile member and the air permeable base surface are engaged via interlocking elements (see wires distributed around the 3D insert, securing this to the perforated mould bottom surface), wherein the shaping profile member comprises at least one rib (the entirety of the 3D insert), and each rib comprises at least two interlocking male elements (five sets of wires visible in Fig. 15A holding the inserts in position).
- 1.3 The respondent's argument that Fig. 15B should be considered rather than Fig. 15A since the former depicted a rib of dimensions more similar to those of Fig. 9 of the patent is not accepted. Fig. 9 of the patent is merely a schematic depiction of the claimed shaping profile member / rib such that no definitive

dimensions can be extracted from it. Moreover, claim 1 defines the scope of protection and this is silent as regards any dimensions of the rib. Fig. 15A is thus no less appropriate than Fig. 15B as forming the basis for a novelty objection to the claimed subject-matter.

1.4 The respondent's reference to black marks on the 3D insert indicating a multi-part insert is not decisive for D2 to still anticipate the feature 'the shaping profile member comprises at least one rib'. Irrespective of whether the 3D insert of Fig. 15A of D2 is a single part or is divided into multiple pieces, both options satisfy the wording 'at least one rib' of claim 1.

1.5 The suggestion that the wires depicted in Fig. 15A of D2 did not unambiguously secure the 3D insert to the perforated mould base is not accepted. The wires are visibly arranged to extend from the perforated mould base and loop over the top of the 3D insert. For the skilled person this unambiguously suggests a fixing of the 3D insert to the mould base with the wires, even in the absence of an explicit description to the effect. Fig. 15A moreover shows five sets of wires distributed along the length of the 3D insert ensuring its secure fixing. Contrary to the respondent's contention, it is not apparent why the wires would be provided to offer any reinforcing function to the 3D insert. The insert is depicted as having a not insignificant structure itself and, in paragraph [0153], is optionally disclosed even to be made of metal. In comparison the wires are of insignificant diameter and seem to lack any significant rigidity such that it is not apparent how these could offer any structural reinforcement for the 3D insert. The suggestion that the 3D insert could reasonably be glued or welded into position is mere

supposition and the distribution of the wires about the length of the 3D insert would then be completely unexplained.

1.6 The respondent's argument that the perforated mould base would fail to provide an interlocking of the wires securing the 3D insert of D2 is also not accepted. The term 'interlocking' is very general, merely requiring a securing interaction between two items. In view of the Board's firm view that the wires are unambiguously intended for securing the 3D insert to the mould base, a securing interaction between the wires and the perforations in the mould base implicitly occurs. The perforations would allow the wire ends to pass through and, if a mere insertion of the wire into the perforations did not achieve the necessary securing (interlocking), a simple bending of the wire on the underside of the mould base would achieve this. The precise positioning of the shaping profile member on the base surface of the mould was also not defined in the claim, so the perforated mould bottom surface of D2 not allowing an accurate positioning of the 3D insert thereon did not hinder the 3D insert from anticipating the claimed shaping profile member / rib.

1.7 As to the claimed rib comprising the interlocking male elements, contrary to the respondent's contention, this does not require the interlocking male elements to be integral with the rib. The word 'comprises' is seen to define a very general relationship between two elements which, at least in the present context of elements holding a rib in position, requires a vicinity allowing the function to be achieved. This includes the two elements being integral with each other, but is not limited to this narrow interpretation. Even if the patent description and figures were consulted for

guidance as to how to interpret the claim, the respondent's reference to Fig. 8 and various paragraphs of the patent do not unambiguously disclose an integral relationship between the shaping profile member and interlocking male elements:

- the shaping profile member and the air permeable base surface are engaged via interlocking elements (paragraph [0118]);
- [if] the interconnection between interlocking elements is initially loose, further gluing or welding ... may be used (paragraph [0121]);
- the shaping profile member, the perforated screen and the base surface hold together with the interlocking elements (paragraph [0156]).

Rather, therefore, these references merely disclose an interlocking engagement between the shaping profile member / rib and allow no conclusion to be reached that the rib and interlocking male elements are of a single piece construction.

The Board thus interprets the term 'comprises' in the present context in its broadest technical reasonable way which encompasses the interlocking male elements not being integrally formed with the shaping profile member / rib. The wires securing the 3D insert in Fig. 15A of D2 are thus found to anticipate the claimed 'rib comprising at least two interlocking male elements'.

1.8 The subject-matter of claim 1 thus lacks novelty over D2 (Article 54 EPC). The main request is not allowable.

2. *Auxiliary requests 1 to 8*

Admittance, Article 12(3) and (5) RPBA

2.1 The opposition division's interlocutory decision found that the patent according to auxiliary request 3 before

it met the requirements of the EPC. At the time of filing its appeal, this was the sole request against which the appellant could appeal (see also Article 12(2) RPBA). With its reply to the grounds of appeal, the respondent filed auxiliary requests 1 to 8. Taking the substantiation of auxiliary request 1 as an example, the respondent provided detail of the basis for the amended claims with respect to the requirement of Article 123(2) EPC and a brief indication of the relevance of the amendment with respect to novelty and inventive step. For auxiliary request 1 this reads:

'New independent claims 1 and 10 further describe the connection between the shaping profile member and the base surface accentuating the notion that the shaping profile member is better fixed on the base surface as explained in paragraph [0126]. None of the cited prior art disclose such distance between the interlocking elements.'

This is the respondent's complete appeal case (see Article 12(3) RPBA) with respect to novelty and inventive step for the subject-matter of claims 1 and 10 of auxiliary request 1.

- 2.2 Auxiliary requests provide fall-back positions for a proprietor in the event that its main request is found not to be allowable. In the present case, the objections to the main request included issues of both novelty and inventive step such that substantiation of auxiliary request 1 should not only have identified how the amendments overcame the novelty objections over the specifically cited documents against the main request, but should have also explained why these differences were considered inventive. It is not for the opponent to make objections to newly filed auxiliary requests

before the proprietor has provided its full substantiation. Quite the contrary - the proprietor's full substantiation is a requirement with filing of the auxiliary requests so that the reasons behind their being allegedly allowable can be examined.

2.3 The requirement under Article 12(3) RPBA for the parties to present their respective complete appeal case at the start of the proceedings provides the Board (and the other parties) with an appeal file that contains every party's complete case and ensures that no party can gain any tactical advantage through deliberate withholding of arguments to a procedurally later time. A patent proprietor who files an amended claim request must, as rule, in order to fulfil the required degree of substantiation according to Article 12(3) RPBA, specify expressly and precisely (i) the basis in the application as originally filed for each amendment, (ii) which objections were intended to be overcome and (iii) reasons why the respective amendment would overcome the objections raised (see Case Law of the Boards of Appeal, 11th edition, V.A.4.3.5b; and, for example, T 1220/21, reasons 4.3.3, T 1128/21, reasons 2.3.2). As set out above in points 2.1 and 2.2, the respondent's submission in its reply to the grounds of appeal does not meet these requirements.

2.4 The respondent's argument that the opposition division had not objected to the same degree of substantiation provided for the auxiliary requests is irrelevant. Insofar as an appeal being a judicial rather than an administrative procedure, different conditions can be applied by the Boards of Appeal regarding substantiation which are detailed in the Rules of Procedure of the Boards of Appeal (see e.g. Article 12(3) RPBA). Furthermore, the opposition division did

not decide on the auxiliary requests under discussion, neither on their admittance nor on their merits. These requests do not form part of the decision under appeal. Thus, the respondent could not rely on a "legitimate expectation that these requests were a valid part of the case to be considered on the merits" as argued with its letter of 14 August 2025 in point 2.4. Rather, in the present appeal proceedings, the requirements for substantiation as set out in Article 12(3) RPBA and the relevant case law of the Boards of Appeal apply. Sufficient substantiation before the Boards of Appeal, whilst case dependent, is generally achieved when the Board and other parties can understand the case being made without having to speculate on the intentions of the party or to make further investigations of their own. This was clearly not met by the short substantiation for novelty and inventive step cited in point 2.1 above.

- 2.5 The respondent's contention that it had identified the distinguishing features in claim 1 of auxiliary request 1 and had indicated the technical effect allegedly achieved by these features is not denied. Yet, this was the extent of its case with regard to inventive step. This reasoning does not provide an understandable case in support of inventive step which would usually be required to indicate why, starting from one of the cited prior art document(s) and wishing to solve the objective technical problem, the skilled person would be unable to reach the claimed subject-matter without exercising an inventive step. Contrary to the respondent's view, therefore, its arguments in support of an inventive step were not sufficient for the request to be substantiated.

- 2.6 The respondent's argument that, prior to the appellant's submission of 12 February 2025, no concrete objections against the inventive step of auxiliary request 1 had been raised to which it could respond is not decisive for the finding of insufficient substantiation of auxiliary request 1. Indeed, as indicated above in point 2.2, it is incumbent on the proprietor when first filing auxiliary requests to substantiate these, i.e. to indicate how the amended claims of these requests overcome the objections which might be found prejudicial to the higher ranking request(s). This substantiation was manifestly not provided on filing of auxiliary request 1.
- 2.7 It thus follows, in view of all the above, that auxiliary request 1 was not sufficiently substantiated in the respondent's reply to the grounds of appeal. Upon filing, auxiliary request 1 thus failed to meet the requirements of Article 12(3) RPBA.
- 2.8 It must still be examined whether this deficiency can be rectified by the respondent's submission of 14 April 2025. In this, the respondent filed a more extensive substantiation of auxiliary request 1, including justification as to why the claimed subject-matter involved an inventive step. Being filed after its reply to the grounds of appeal, this submission is an amendment to the respondent's appeal case under Article 13(1) RPBA, the admittance of which is at the discretion of the Board in view of, *inter alia*, whether the amendment is detrimental to procedural economy.
- 2.9 As indicated by the appellant, the novelty and inventive step objections to auxiliary request 1 had been filed by it already before the opposition division with its submission of 26 July 2023, the auxiliary

request at the time being numbered auxiliary request 3. Contrary to the arguments of the respondent, therefore, the objections to the auxiliary requests were not filed for the first time only with appellant's submission of 12 February 2025, rather these having been on file since proceedings before the opposition division. It is thus apparent that the respondent knew the inventive step objections to auxiliary request 1 at the time of submitting its reply to the grounds of appeal yet failed to respond to these with a detailed substantiation of inventive step.

2.10 The respondent's contention that earlier substantiation of auxiliary request 1 was unnecessary is not accepted. It is a core concept of adversarial judicial proceedings that a party presents its complete case at the earliest opportunity, as stipulated in Article 12(3) RPBA. The withholding of its complete defence, only for this to be filed at a later stage, can only be regarded as conduct determined by procedural tactics (so-called 'salami tactics') or as a failure to comply with procedural requirements, which in both cases is in the interests of neither procedural economy nor fairness towards the appellant.

2.11 The respondent's further arguments all fail to change this finding. As to the appellant allegedly having had sufficient time to respond to the full substantiation, this does not excuse the respondent's piecemeal addition to the substantiation which necessitates the appellant to react time and again to the changing factual and legal situation of the case. A reduction in the total number of auxiliary requests to consider compared to those on file before the opposition division also fails to promote efficiency in the appeal procedure itself, such efficiency having been hindered

through the failure to present a complete case at the first opportunity.

- 2.12 It thus follows that admitting the respondent's substantiation of auxiliary request 1 filed with its submission of 14 April 2025 would be detrimental to procedural efficiency. The Board thus exercised its discretion under Article 13(1) RPBA not to admit such substantiation.
- 2.13 In the absence of a sufficient substantiation of auxiliary request 1 under Article 12(3) RPBA and the correction of this not being admitted under Article 13(1) RPBA, the Board exercised its discretion under Article 12(5) RPBA not to admit auxiliary request 1. As follows from the above explanations, admitting this request would be contrary to the purpose of the substantiation requirements under Article 12(3) RPBA and contravene the principles of procedural economy.
- 2.14 As regards auxiliary requests 2 to 8, the respondent presented no alternative arguments in support of the admittance of these. The Board thus concluded correspondingly, and exercised its discretion to also not admit auxiliary requests 2 to 8 (Article 12(5) RPBA).

Order

For these reasons it is decided that:

1. The decision of the opposition division is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Magouliotis

M. Dorfstätter

Decision electronically authenticated