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**Datasheet for the decision
of 8 January 2026**

Case Number: T 0029/24 - 3.2.04

Application Number: 16743585.8

Publication Number: 3251646

IPC: A61F13/15, A61F13/49,
A61F13/496

Language of the proceedings: EN

Title of invention:

METHOD FOR PRODUCING STRETCHABLE SHEET

Patent Proprietor:

Daio Paper Corporation

Opponent:

Mondi AG

Headword:

Relevant legal provisions:

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

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



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Case Number: T 0029/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 8 January 2026

Appellant:
(Opponent 2)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 6 November 2023
rejecting the opposition filed against European
patent No. 3251646 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman A. Pieracci
Members: M. Hannam
 S. Ruhwinkel

Summary of Facts and Submissions

- I. An appeal was filed by each of the opponent I and opponent II against the decision of the opposition division rejecting the opposition to European patent No. 3 251 646. They each requested that the decision under appeal be set aside and the patent be revoked.
- II. In its reply to the appeals, 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 4.
- III. With a submission of 10 July 2025, opponent I withdrew its opposition and thus also its appeal.
- 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 and that none of the auxiliary requests overcame this objection.
- V. With its submission of 8 December 2025, opponent II (hereafter simply 'appellant') filed further auxiliary requests 1a to 1f, 2a to 2e, 3a to 3j and 4a to 4o.
- VI. Oral proceedings were held before the Board on 8 January 2026, at the close of which the parties' requests were as follows:

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

The respondent requested that the appeal be dismissed and the patent be maintained as granted, or, in the alternative, that the patent be maintained according to one of auxiliary requests 1, 1a to 1f, 2, 2a to 2e, 3, 3a to 3j and 4, 4a to 4o.

VII. Claim 1 of the main request reads as follows (with feature numbering as used by the opposition division in its decision):

P1: A method of manufacturing a stretchable sheet that stretches and contracts, the method comprising
P2: interposing a resilient film (30) that can stretch and contract in both a machine direction (MD) and a direction orthogonal to the machine direction (CD), in a stretched state in the machine direction (MD) between a first sheet layer (21) and a second sheet layer (22),
P3: the first sheet layer (21) having no elasticity and
P4: the second sheet layer (22) having no elasticity; and
P5: joining the first sheet layer (21) and the second sheet (22) layer together with a number of joints (40) directly or through the resilient film (30);
P5.1: by melting the resilient film (30) with ultrasonic fusion energy applied by a thermal fusion device from an outside of the first sheet layer (21) and an outside of the second sheet layer (22) to a number of joint regions with intervals,
P5.2: in a state where the resilient film (30) has been interposed in the stretched state between the first sheet layer (21) and the second sheet layer (22), during the interposing,
P6: wherein a through-hole (31) having an annular shape around each of the joint (40) is formed through at

least a boundary portion in a direction of the stretching between the resilient film (30) and each of the joints when the resilient film is melted,
P6.1: with the first sheet layer (21) and the second sheet layer (22) retained,
P6.2: no hole being formed over the entirety of each of the joint regions, during the joining.

A citation of the wording of claim 1 of each of the auxiliary requests is unnecessary for the present decision.

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

Main request

The subject-matter of claim 1 extended beyond the content of the application as filed, since feature P6 lacked basis. Paragraph [0020] as filed failed to disclose a through-hole having an annular shape around each of the joints. Rather, the last sentence of paragraph [0020] merely disclosed each through hole to have a shape stretched from the edge of the joint in both directions; only 'in some cases' (rather than in each case) would the through hole also have an annular shape around the joint. Not least in the present context, the expression 'in some cases' would be understood by the skilled person to indicate that not all through holes had the annular shape. The joint forming process was also unable to ensure identical through-holes at every joint such that additionally for this reason an annular through-hole at each joint would not be interpreted onto the paragraph [0020] disclosure by the skilled person.

Auxiliary requests

None of the auxiliary requests overcame the added subject-matter objection applicable to claim 1 of the main request.

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

Main request

The subject-matter of claim 1 did not extend beyond the content of the application as filed. The expression 'in some cases' in paragraph [0020] as filed disclosed the annular shape being a more specific version of the through holes having a shape stretched from the edge of the joint in both directions.

Claim 1 as filed already disclosed that a through-hole was formed between the resilient film and each of the joints. This condition was reiterated in the last sentence of paragraph [0020] with the further qualification that the particular form adopted may be an annular shape, thus providing an unambiguous disclosure of an annular through-hole being formed around each of the joints.

Further, the same process conditions for forming the joints were used for all joints such that the through-holes would all be the same i.e. would all have an annular shape at the joints.

Furthermore, paragraph [0018] disclosed three joining modes for the first and second sheet layers of which solely joining mode (2) reflected that joining mode underlying claim 1, since through holes surrounding the joints were formed in the resilient film. This was therefore what the expression 'in some cases' was referring back to in paragraph [0020], i.e. a case where each joint was surrounded by an annular through-hole.

Auxiliary requests

For essentially the same reasons as those presented for the main request, the subject-matter of claim 1 of each of the auxiliary requests also met the requirement of Article 123(2) EPC.

Reasons for the Decision

1. Main request

1.1 Article 100(c) EPC

1.1.1 The application as filed lacks a direct and unambiguous disclosure of feature P6 of claim 1, particularly in relation to 'a through-hole having an annular shape around each of the joint (*sic*)'. Paragraph [0020] as filed discloses the through-holes merely in some cases as having an annular shape around the joint and thus lacks a direct and unambiguous disclosure of annular shaped through-holes being present around all of the existent joints i.e. around each of the joints.

1.1.2 Even accepting the respondent's contention that the expression 'in some cases' in paragraph [0020] as filed disclosed the annular shape being a more specific version of the through holes having a shape stretched from the edge of the joint in both directions, this nonetheless solely discloses the possibility of some of the through-holes having an annular shape around the joint. A direct and unambiguous disclosure of a through-hole having an annular shape around each of the joints is simply not derivable by the skilled person from paragraph [0020] as filed.

- 1.1.3 The Board concurs with the respondent that claim 1 as filed already defined that a through-hole was formed between the resilient film and each of the joints. However, as also indicated by the appellant, this allows no conclusion to be reached regarding the shape of the through-hole since paragraph [0020] was the sole disclosure in the application as filed of a through-hole having an annular shape around the joint and, as already found in points 1.1.1 and 1.1.2 above, paragraph [0020] lacked the requisite direct and unambiguous disclosure of the annular shape being present around each of the joints.
- 1.1.4 The respondent's argument that every through-hole would have the annular shape since the same process conditions would be used for all joints is not accepted. Even if the same process conditions were certain to result in identical joints and through-holes, which as the appellant also argued is not necessarily the case, claim 1 is not limited to particular process conditions for forming the joints such that identical through holes at the joints would not necessarily be formed when carrying out claim 1.
- 1.1.5 The respondent's reference to paragraph [0018] as filed to argue that the expression 'in some cases' in paragraph [0020] was referring back to joining mode (2) is not accepted to unambiguously be the case. If this were the deliberate intention of the drafter, a much clearer reference specifically to this joining mode described two paragraphs earlier would be expected. Given the proximity of the expression 'in some cases' in paragraph [0020] to the immediately foregoing 'through-holes each have a shape stretched from the edge of the joint in both directions', this is seen to be the more likely intended reference of the

expression. Either way, a direct and unambiguous reference being made back to the joining mode (2) of paragraph [0018] is certainly not derivable from the expression 'in some cases' in paragraph [0020].

1.1.6 In summary therefore, feature P6 of claim 1 lacks a direct and unambiguous basis in the application as filed. At least for this reason, the subject-matter of claim 1 extends beyond the content of the application as filed.

1.1.7 Consequently the ground for opposition under Article 100(c) EPC is prejudicial to maintenance of the patent as granted and the main request is not allowable.

2. *Auxiliary requests*

2.1 *Article 123(2) EPC*

2.1.1 Claim 1 of each of the auxiliary requests on file includes the feature directed to 'a through-hole having an annular shape around each of the joint', found to lack basis in claim 1 of the main request. To the Board's preliminary opinion, indicated by the Chairman at oral proceedings, that the subject-matter of claim 1 of each of the auxiliary requests failed to meet the requirement of Article 123(2) EPC at least for the same reasons as found for the main request, the respondent merely referred to its written submissions.

2.1.2 Neither in the respondent's letter of reply to the appellants' grounds of appeal nor in its submission of 8 December 2025 was any argument provided by the respondent that could lead to the conclusion that the amendments made to claim 1 of any of the auxiliary requests overcome the objection of added subject-matter

with respect to the feature 'a through-hole (31) having an annular shape around each of the joint'. The Board fails to see any of the auxiliary requests overcoming this objection for the same reasons as mentioned above under 1.1.

2.1.3 It thus follows that, irrespective of their admittance, the subject-matter of claim 1 of each of the auxiliary requests fails to meet the requirement of Article 123(2) EPC for the same reasons as those indicated under Article 100(c) EPC for the main request.

2.1.4 None of the auxiliary requests is allowable.

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