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Datasheet for the decision of 5 May 2026

Case Number: T 0327/24 - 3.2.04

Application Number: 17829472.4

Publication Number: 3558200

IPC: A61F13/49, A61F13/551

Language of the proceedings: EN

Title of invention:
HIP-TO-WAIST AND WAIST-TO-CROTCH SILHOUETTE(S) OF ABSORBENT ARTICLE(S) COMPRISING BEAMED ELASTICS

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Essity Hygiene and Health Aktiebolag

Headword:

Relevant legal provisions:
EPC Art. 56, 100(a)
RPBA 2020 Art. 15(1)

Keyword:
Inventive step - technical effect derivable from application as originally filed (no), differentiating features arbitrary (yes)

Decisions cited:
T 0930/23, T 1862/15

Catchword:

Europäisches Patentamt
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Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0327/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 May 2026

Appellant: (Opponent)	Essity Hygiene and Health Aktiebolag 405 03 Göteborg (SE)
Representative:	Essity Hygiene and Health AB Essity IP Department 405 03 Göteborg (SE)
Respondent: (Patent Proprietor)	The Procter & Gamble Company One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 4 January 2024 rejecting the opposition filed against European patent No. 3558200 pursuant to Articl e 101(2) EPC.**

Composition of the Board:

Chairman A. Pieracci
Members: M. Hannam
K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 3 558 200. It requested that the decision under appeal be set aside and the patent be revoked.

II. In its reply to the appeal, 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 13.

III. The following document is relevant to the present decision:

D1 US-A-7 118 558

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 subject-matter of claim 1 of the main request appeared to lack an inventive step. It further indicated that each of the auxiliary requests on file seemed to meet with the same outcome.

V. Oral proceedings by videoconference were held before the Board on 5 May 2026, at the close of which the parties' requests remained as indicated above.

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

1.1 An absorbent article (100), comprising: a front

waist region (36), a back waist region (38), and a crotch region (37) therebetween;

1.2 a chassis (200) comprising a topsheet (124), a backsheet (125) and an absorbent core (128) disposed between the topsheet and the backsheet, wherein the chassis comprises a front end edge (136), a back end edge (138), and a pair of laterally opposing side edges (237a, 237b);

1.3 a back belt (430b) disposed in the back waist region overlapping and extending outboard of the back end edge of the chassis,

1.4 the back belt comprising a first plurality of elastics (316a);

1.5 a front belt (430f) disposed in the front waist region overlapping and extending outboard of the front end edge of the chassis,

1.6 the front belt comprising a second plurality of elastics (316b); wherein

1.7 the front belt is joined to the back belt at or adjacent the laterally opposing belt side edges to form leg openings (192) and a waist opening (190) to form a closed form pant;

1.8 a longitudinal axis (42) extending from the midpoint of the front waist edge to the midpoint of the back waist edge; a lateral axis (44) extending perpendicular to the longitudinal axis through the midpoint of the longitudinal axis; wherein

1.9 the first plurality of elastics has an Average-Strand-Spacing of less than 4 mm, and wherein

1.10 the second plurality of elastics has an Average-Strand-Spacing of less than 4 mm; wherein

1.11 the Product Hip-to-Waist Silhouette, defined as the Relaxed Product Hip Width (601) in millimeters divided by the Relaxed Product Waist Width (602) in millimeters, is from about 0.8 to about 1.1; wherein

1.12 the Product Waist-to-Crotch Silhouette, defined

as the Relaxed Product Waist Width (602) in millimeters divided by the Relaxed Product Crotch Width (608) in millimeters, is from about 0.8 to about 2.0; and wherein the Relaxed Product Hip Width, the Relaxed Product Waist Width, and the Relaxed Product Crotch Width are measured as indicated in the description.

Claim 1 of auxiliary request 1 reads as for claim 1 of the main request except that both feature 1.4 and 1.6 have the following feature appended:

"comprising greater than about 40 elastic strands".

Claim 1 of auxiliary request 2 reads as for claim 1 of the main request except that feature 1.4 has the following feature appended:

"comprising greater than about 70 elastic strands"

and feature 1.6 has the following feature appended

"comprising greater than about 50 elastic strands".

Claim 1 of auxiliary request 3 reads as for claim 1 of the main request except that feature 1.10 has the following feature appended:

"wherein the Average-Dtex of the first plurality of elastics (316a) is from about 10 to about 500, and wherein the Average-Dtex of the second plurality of elastics (316b) is from about 10 to about 500".

Claim 1 of auxiliary request 4 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 1 and claim 1 of auxiliary request 3 indicated above.

Claim 1 of auxiliary request 5 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 2 and claim 1 of auxiliary request 3 indicated above.

Claim 1 of auxiliary request 6 reads as for claim 1 of the main request except that feature 1.10 has the following feature appended:

"wherein the Pressure Under Strand of the first plurality of elastics (316a) is from about 690 Pa (0.1 psi) to about 6900 Pa (1 psi), and wherein the Pressure Under Strand of the second plurality of elastics (316b) is from about 690 Pa (0.1 psi) to about 6900 Pa (1 psi)".

Claim 1 of auxiliary request 7 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 1 and claim 1 of auxiliary request 6 indicated above.

Claim 1 of auxiliary request 8 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 2 and claim 1 of auxiliary request 6 indicated above.

Claim 1 of auxiliary request 9 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 3 and claim 1 of auxiliary request 6 indicated above.

Claim 1 of auxiliary request 10 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 1, claim 1 of auxiliary request 3 and claim 1 of auxiliary

request 6 indicated above.

Claim 1 of auxiliary request 11 reads as for claim 1 of the main request except that the claim incorporates the amendments made to claim 1 of auxiliary request 2, claim 1 of auxiliary request 3 and claim 1 of auxiliary request 6 indicated above.

Claim 1 of auxiliary request 12 reads as for claim 1 of the main request except that feature 1.1 reads as follows:

"A bag containing at least 10 absorbent articles (100), each absorbent article comprising: a front waist region (36), a back waist region (38), and a crotch region (37) therebetween".

Claim 1 of auxiliary request 13 reads as for claim 1 of the main request except that feature 1.1 reads as follows:

"A bag containing at least 10 folded absorbent articles (100), each absorbent article comprising: a front waist region (36), a back waist region (38), and a crotch region (37) therebetween".

VII. The arguments of the parties relevant to the present decision are incorporated into the 'Reasons for the Decision' which follows.

Reasons for the Decision

1. Main request

Inventive step

1.1 Disclosure in D1

Considering Example 2 of D1 (see from col. 28, line 49 onwards) as the starting point for the inventive step analysis, both parties explicitly accept that claim 1 is differentiated over this disclosure by way of features 1.11 and 1.12 i.e. by the specifically claimed ranges of Product Hip-to-Waist Silhouette (PHWS) and Product Waist-to-Crotch Silhouette (PWCS). The Board concurs with this analysis.

1.2 Technical effect and objective technical problem

1.2.1 With reference to paragraph [0003] of the patent, the respondent alleged that the claimed range of the PHWS parameter provided the absorbent article with a more rectangular shape of the belt region and thus a more stable packaging relative to the article known from D1. The Board notes that this paragraph of the patent makes explicit reference to Fig. 17 which depicts a stack of absorbent articles, each article positioned directly one above the other. For such a stack of articles, there is no technically credible reason why a more rectangularly shaped belt region of an article would stack more stably than a trapezoidally shaped one. As also argued by the appellant at oral proceedings, the absorbent core of an article is typically significantly thicker than the belt region such that the nature of the absorbent core would be the primary factor influencing stability of stacked articles. The precise perimeter contour of the thinner belt region would not be expected to relevantly influence article stacking.

1.2.2 At oral proceedings the respondent argued that the more rectangular shape of the claimed articles provided packaging advantages in a 'side-by-side' arrangement of two packaged articles since, relative to more trapezoidally shaped articles, better tessellation of the two articles would be possible i.e. less space would exist between packaged articles. Such an advantage is not accepted across the breadth of claim 1, which fails to include any features limiting the claim to such a 'side-by-side' packaging arrangement of the articles. It is furthermore noted that a greater rectangularity of an article's belt region, which is the region of an article actually addressed in the PHWS parameter, is not seen to materially change the tessellation of side-by-side articles as a whole, such that any improvement in packaging stability thereby is also not credible.

1.2.3 The technical problem to be solved presented by the respondent, namely to 'make an absorbent article more stable to stack compared to one of the same design' is thus not seen to be objective.

1.2.4 As regards the technical effect resulting from the claimed PHWS parameter range, it is noted that the patent fails to disclose, and the respondent failed to furnish during the opposition procedure, any data credibly justifying that the claimed range of PHWS offers any advantage over PHWS values outside the claimed range. For example, why would a PHWS within the claimed range of from about 0.8 to about 1.1 be advantageous relative to a PHWS of 0.75 or 1.15? The claimed range can thus only be seen as representing arbitrary values lacking a purposeful selection.

1.2.5 In the absence of the claimed PHWS range having a technical effect going beyond that demonstrated by PHWS values outside of this range, the objective technical problem to be solved is seen to be 'to provide an alternative absorbent article'.

1.3 Claimed solution

1.3.1 With the claimed PHWS parameter range merely representing arbitrary values, a technical effect distinguishing the claimed solution from that of PHWS values outside of this range is not present. Consequently, the skilled person would not need to become inventively active in order to reach feature 1.11 of claim 1 (see Case Law of the Boards of Appeal I.D.9.21.9a); T0930/23, Reasons 1.2). It is also noted that, in such cases involving an arbitrary selection, the prior art does not need to contain an incentive for the skilled person to select the particular solution claimed; rather, all possible solutions have to be regarded as being equally suitable and obvious candidates for solving the objective technical problem (see for example T1862/15, Reasons 8.4).

1.4 Regarding feature 1.12 of claim 1, point 1.3.3 of the Board's communication under Article 15(1) RPBA indicated that the same conclusions to that for feature 1.11 would apply to feature 1.12. The respondent did not contest this preliminary opinion and presented no arguments to suggest the contrary.

1.5 In summary, therefore, the subject-matter of claim 1 lacks an inventive step. Consequently Article 100(a) EPC in combination with Article 56 EPC prejudices maintenance of the patent as granted.

2. Auxiliary request 1

The features added to claim 1 relative to claim 1 of the main request are known from Example 2 of D1 (see in particular col. 28, lines 56 to 62). For the same reasons as concluded for the main request, therefore, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).

3. Auxiliary request 2

In point 2.3 of its communication under Article 15(1) RPBA, the Board reasoned why, despite the amendments made to claim 1, its subject-matter still lacked an inventive step in the light of D1 alone. In particular the Board found that should the objective problem to be solved resulting from the specific numbers of elastic strands being recited in the front and back belt be simply 'to provide a suitable number of elastics', col. 3, line 35 of D1 disclosed this. To this preliminary opinion the respondent refrained from presenting counter-arguments, explicitly relying on its submissions in writing. The Board, after having reconsidered all the legal and factual aspects of the case, confirms its preliminary opinion herewith, that the subject-matter of claim 1 lacks an inventive step.

4. Auxiliary request 3

The features added to claim 1 relative to claim 1 of the main request are known from Example 2 of D1 (see once more in particular col. 28, lines 56 to 62). For the same reasons as concluded for the main request, therefore, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).

5. Auxiliary requests 4 and 5

As indicated in point 2.4 of the Board's communication under Article 15(1) RPBA, these requests are based on combinations of amendments made in auxiliary requests 1 to 3 and thus lack an inventive step for essentially the same reasons. To this preliminary opinion the respondent presented no counter-arguments such that the Board, after having reconsidered all the legal and factual aspects of the case, confirms its preliminary opinion that the subject-matter of claim 1 of both auxiliary requests 4 and 5 lacks an inventive step.

6. Auxiliary request 6

6.1 Claim 1 has been amended relative to claim 1 of the main request to define that the Pressure Under Strand of both the first and second plurality of elastics is from about 690 Pa (0.1 psi) to about 6900 Pa (1 psi). As also agreed by both parties, this feature is not explicitly disclosed in D1.

6.2 Paragraph [0098] of the patent (see in particular from line 46 of page 19) discloses how the desired balance of elastic modulus and pressure on the skin can be achieved by:
- reducing the elastic decitex and/or elastic strain as the spacing between the elastics is reduced.
Therefore, elastic decitex and elastic spacing alone can be decisive in determining the Pressure Under Strand exhibited by a plurality of elastics.

6.3 The absorbent article of example 2 of D1 comprises 49 stomach elastics in each of the elastic assemblies 52 which, over a length of about 100mm, results in an average strand spacing of about 2mm. This lies within

the less than 4mm range of elastic strand spacing of claim 1.
Similarly, the absorbent article of example 2 comprises stomach elastics with a decitex of 220, this also falling within both the range of about 10 to about 500 decitex included in claim 3 as granted and also within the preferred range of about 50 to 250 decitex in paragraph [0081] of the patent.
It thus follows that both the elastic spacing and the decitex of the first and second plurality of elastics disclosed in D1 precisely match those of the absorbent article according to claim 1 of auxiliary request 6. With no further factors influencing the Pressure under Strand, the Pressure under Strand exhibited by the elastic strands of D2 must implicitly fall within the range recited in claim 1.

6.4 The respondent argued that the method for determining the Pressure Under Strand was depicted in Fig. 16 and described in paragraphs [0133] and [0134]. This necessitated an elastic strand to be wrapped around the circumference of a cylinder of 460mm circumference which, since the stomach elastic assemblies of example 2 of D2 were shorter than this necessarily meant that their Pressure Under Strand values could not be determined.

The respondent is correct insofar as the stomach elastic assemblies of D2 would indeed not be suitably sized to allow their Pressure Under Strand values to be measured on the apparatus of Fig. 16. However, as reasoned in point 6.3 above, all factors disclosed to affect the Pressure Under Strand in the opposed patent are satisfied in example 2 of D2 such that, implicitly, the Pressure Under Strand of the stomach elastic assemblies of example 2 must fall within the claimed

range.

As also argued by the appellant, every article with an elasticated waist will exhibit a Pressure Under Strand resulting from the contracting elastic strands of the article tightening the waistband onto the wearer's skin. However, the specific method in which it is established in the patent is not a standardised method broadly used in the field rather, as alleged by the appellant and not disputed by the respondent, it is a method unique to the patentee. The inability to measure the Pressure Under Strand of the assemblies of example 2 of D2 is however not detrimental to the finding that these fall within the claimed Pressure Under Strand ranges due to all factors affecting the parameter being equally disclosed in D2.

6.5 The respondent also referred to Table 5 of the patent which it held to support the technical effect of the claimed range and also indicated that comparative articles (indicated as 'Currently Marketed' Products A, B and C in Table 5) did not meet the claimed Pressure Under Strand range.

This argument fails to change the Board's conclusion. Even if the prior art of Table 5 failed to disclose a comparable Pressure Under Strand to that of the claimed article (which it does not since the Product C samples in Table 5 exhibit a Pressure Under Strand falling within the claimed upper limit for the parameter of 1 psi), this would lack any consequence since it is example 2 of D2 which is found to inherently comprise a Pressure Under Strand falling within the claimed range.

6.6 In summary, therefore, the newly added feature to claim 1 of auxiliary request 6 fails to further differentiate the claimed subject-matter from D2. Therefore, for the same reasons as concluded for the main request, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).

7. Auxiliary requests 7 to 11

As indicated in point 2.6 of the Board's communication under Article 15(1) RPBA, these requests are based on combinations of amendments made in auxiliary requests 1 to 6 and thus lack an inventive step for essentially the same reasons. To this preliminary opinion the respondent presented no counter-arguments such that the Board confirms the same, that the subject-matter of claim 1 of each of auxiliary requests 7 to 11 lacks an inventive step.

8. Auxiliary requests 12 and 13

The amendments made to claim 1 of each of auxiliary requests 12 and 13 fail to address the inventive step objection found persuasive for the main request (see point 1.1 to 1.5 above). The Board identified this in point 2.7.2 of its communication under Article 15(1) RPBA, to which the respondent refrained from presenting any counter-arguments, solely relying on its written submissions at oral proceedings.
The Board thus, after having reconsidered all the legal and factual aspects of the case, confirms its preliminary opinion herewith that the subject-matter of claim 1 of each of auxiliary requests 12 and 13 lacks an inventive step (Article 56 EPC).

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