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D E C I S I O N
of 29 November 1996

Case Number: T 0238/95 - 3.2.2

Application Number: 90917681.0

Publication Number: 0500758

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:
Incontinence guard for men

Applicant:
Mölnycke AB

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0238/95 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 29 November 1996

Appellant: Mölnlycke AB
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 2 November 1994
refusing European patent application
No. 90 917 681.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Seidenschwarz
Members: M. Bidet
C. Holtz

Summary of Facts and Submissions

- I. European patent application No. 90 917 681.0, publication No. 0 500 758, was filed on 16 November 1990 with World Intellectual Property Organisation (WIPO).
- II. By its decision issued on 2 November 1994, the Examining Division refused the application, holding that the alleged invention was obvious in the light of documents:

EP-A-0 167 931 (D1)
WO-A-86/05 386 (D2).

The decision was based on a set of three Claims filed with letter of 17 February 1994.

The Examining Division held that the elasticized part of the rectangular absorbent pad extending from one end of the pad to the other end according to document D1 assumed a "J" configuration in the relaxed position of the pad. There was consequently a trough-like portion which conformed to the perineal area of the wearer.

The subject-matter of Claim 1 structurally differed from the disclosure of document D1 only in the form of the elasticized part, which on the basis of the content of document D1 and the teaching of document D2 disclosing a truncated triangular pad particularly well adapted for men, did not involve an inventive step.

- III. An appeal was filed on 29 December 1994 and the appeal fee was paid at the same date. The statement setting out the grounds of appeal was received on 6 March 1995.

In this statement, the Appellant emphasised that:

- the feature in present Claim 1 that the shape of the absorbent guard exhibited a more pronounced curvature towards the first end was not merely an effect of this feature alone, but rather of a combination of several features, such as the one mentioned and the presence of a prestretched elastic device,
- the skilled person starting from a disposable absorbent article according to document D1 would not have considered document D2 relating to a reusable article concerning a totally different technical concept in that it showed a pad of absorbent material without an elastic device, firmly sewn into a pair of pants,
- if he were to combine the teaching according to document D1 with the truncated triangle shape according to document D2, he would not obtain the increasing curvature fitting around the scrotum of the wearer, and would also not obviously realise that the narrowing shape, also in combination with the elastic device along the sides edges will give the particular and advantageous, progressively sharper curved shape.

IV. Following a communication of the Board, the appellant submitted an amended Claim 1 and description, in which Claim 1 amended to meet the requirement of support by the description reads as follows:

"A male incontinence guard intended for one-time use only and including an inner, liquid permeable casing layer (2), which is intended to lie closest to the body of the wearer in use; an outer liquid impermeable casing layer (3); an absorbent pad (4) enclosed between

said layers, said pad (4) having a first end (10), an opposing second end and side edges (5a, 5b) extending between said first and second ends, and having a longitudinal direction extending between said first (10) and second ends; and at least one elastic device (9) attached in a prestretched state to the inner casing layer (2) and extending along each of the side edges (5a, 5b) of said pad over at least a part of the lengths of said side edges so that contraction of said elastic device (9) from said prestretched state causes that part of the absorbent pad located between said side edge parts to take a shape curved in said longitudinal direction; characterized in that at least a first part of the absorbent pad (4) narrows towards said first end (10) thereof, intended to be directed towards the back of the wearer, so that within this first part the local resistance of the pad (4) to bending decreases towards said first end (10); and that said at least one elastic device (9) extends from said first, narrower end (10), whereby contraction of the elastic device (9) causes said first part of the absorbent pad (4) to assume a shape which in said longitudinal direction curves more pronouncedly towards said first end (10) and which also curves in a transverse direction perpendicular to said longitudinal direction so that, when the guard is used, said first part will be curved inwardly beneath and surround, at least particularly, the scrotum of the wearer."

- V. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following documents:

Claims: 1 filed on 4 October 1996
2 and 3 on 6 March 1995

Description: pages 2,3,6,7 filed on 4 October 1996
pages 1,4,5,8 as originally filed
page 2a filed with letter of 6 August 1993

Drawings: sheets 1/2 and 2/2 as filed with letter of
6 August 1993.

Reasons for the Decision

1. The appeal is admissible
2. *Amendments*
 - 2.1 Present Claim 1 is based on Claim 1 and the description of the application as filed (see page 3, lines 11 to 13; page 4, lines 9 to 12; page 5, line 29 to page 6, line 5; Figures 1 and 2) to which have been added the features concerning a clearer definition of the geometrical shape of the pad, now specifying firstly the side edges extending between first and second, opposed ends defining the longitudinal direction, and secondly the first part of the absorbent pad narrowing to the first end and which is intended to be directed towards the back of the user, so that within this first part, the local resistance of the pad to bending decreases towards the first end, with the consequence that the pad assumes a shape which in the longitudinal direction curves more pronouncedly towards the first end and which also curves in a transverse direction perpendicular to the longitudinal direction.

2.2 The present claim 2 is mainly claim 2 of the originally filed set of claims, with the addition of what was Claim 3, relating to the generally triangular shape of the absorbent pad(3) in the stretched state. It is supported by the description of the application as filed (see page 4, lines 29 to 34 and Figure 1).

2.3 The description has been brought in line with the content of the new Claims 1 to 3 and cites the documents D1 and D2 as the relevant prior art without adding to the disclosure of the application as filed.

2.4 The requirement of Article 123(2) EPC is therefore met by the amended document.

3. *State of the art*

3.1 Document D1 discloses a male incontinence guard intended for one-time use only having an absorption pad enclosed between a liquid permeable layer and an outer liquid impermeable casing layer. The pad has two side edges extending between a first end and an opposed second end. According to the embodiment of Figures 5 and 6, an elastic device, attached in a pre-stretched state to the casing layer along each of the side edges over at least a part of the length of the side edges, causes that part of the pad to assume a bowed or curved shape in the longitudinal direction when the elastic device is relaxed (see page 4, lines 4 to 28; page 5, lines 2 to 5; page 5, lines 27 to page 6, line 4).

The bowed, generally trough-like pad is held in place by a tight fitting garment or by placing adhesive lines or areas on the exterior facing of the pad, for example on the ends of the pad, or by belts or straps (see page 9, lines 28 to 35).

It is an object of the known male incontinence guard to provide a comfortable, discreet, highly absorbent non-leaking urinary incontinence pad (see page 2, lines 10 to 18).

The male incontinence guard according to Claim 1 of the patent application in suit differs from that disclosed in document D1 in that at least the first part of the absorbent pad narrows towards the first end thereof, so that within this first part, the local resistance of the pad to bending decreases towards the first end. The contraction of the elastic device causes the first part to assume a shape which curves in the longitudinal direction more pronouncedly.

- 3.2 Document D2 relates also to an incontinence device which consists of a garment -such as a conventional pair of pants- including a sewn-in absorbent pad. According to the embodiment of Figures 1 to 4, the rectangular pad designed for women is fixed on the garment. For men, a non-rectangular pad is of advantage and according to the embodiment of Figure 5 at least a part of the pad narrows to the first end of the pad (see page 2, line 30 to page 3, line 24, Claim 1, 2 and 4 and Figures 1, 2 and 5).

It is an object of this device to prevent capillary flow of urine by isolating the pants from the absorbent material of a pad sewn into the pants which can be laundered and re-used in the same way as a normal garment (see page 1, lines 23 to 26).

However, the known incontinence device is not provided with an elastic device and it assumes a curved shape in the longitudinal direction **only in dependence** of the

predesigned curved shape of the pants to which it is attached. Consequently, there is neither a **pronounced** curved shape of the assembly pants-pad in the longitudinal direction nor a supplementary curved shape in the transversal direction.

3.3 The other documents cited in the search report are less relevant than the two above cited documents D1 and D2.

4. *Novelty*

None of the documents of the state of the art discloses in combination all the features specified in Claim 1 of the application in suit.

The subject-matter of Claim 1 is therefore considered to be new within the meaning of Article 54(1) EPC.

5. *Nearest prior art*

From the above point 3 it follows that the embodiment according to document D1 represents the state of the art nearest to the subject-matter of Claim 1.

6. *Inventive step*

6.1 According to the description of the patent application in suit, large and bulky diapers are unacceptable to men who suffer from incontinence but are otherwise not handicapped and they are uncomfortable when worn (see page 1, lines 26 to 30 and page 2, lines 7 to 35).

It is an object of the present invention to provide an incontinence guard for men who suffer mild drop-incontinence designed to be more comfortable and being readily accommodated in conventional clothing (see page 3, lines 1 to 5).

- 6.2 This object is achieved according to the characterising portion of Claim 1 by the features cited in the last paragraph of point 3.1 above.

With the part of the absorbent pad narrowing toward the first end of the pad and the elastic device provided along the sides of the narrowing part of the pad, the resistance of the pad to the forces applied along these sides decreases toward the end of the pad. The pad bends or curves therefore **more pronouncedly** in the region nearest the end than in parts more distal therefrom and is also transversally curved (see description of the invention, page 6, lines 1 to 5). This leads to a three-dimensional pouch shape with the narrower, pointed end of the pad being **more sharply** curved, i.e. having a smaller radius of curvature, than the wider opposite end. In use, the pad for men fits anatomically very well, without being bulky and consequently being more comfortable.

- 6.3 According to the teaching of document D1, the rectangular pad with the elastic device extending along at least a part of the sides edges is primarily a woman's product taking a bowed, trough-like configuration which readily conforms to the pubic area (see page 2, lines 5 to 7, lines 23 to 27; page 4, lines 22 to 32; page 2, line 5; Figure 3). As regards the incontinence guard for men, document D1 teaches providing the woman's product with larger sizes (see page 5, lines 2 to 5). Increasing the dimensions of a pad for women is not a specific technical feature distinguishing this pad for women from a pad specifically designed for men, but it is the only solution taught by document D1. Therefore this document

does not suggest changing the geometrical shape of the pad to provide an incontinence pad specifically adapted for men in the sense of Claim 1 of the application in suit.

6.4 Document D2 relates to a pad sewn into the pants forming a unitary product. The rectangular pad is maintained in position on the pants first by stitching the pad to a sheet, and secondly by stitching the sheet to the pants, so that the pad has to assume the shape of the part of the pants into which the unit pad/sheet is sewn (see page 1, lines 27 to 36). The rectangular pad according to the embodiment of Figures 1 to 4, is substituted by a truncated triangle -i.e. a part of the pad narrowing toward one end of it- in order to be adapted for men (see page 3, lines 21 to 24 and Figure 5). The method of manufacturing the unit for men is the same as for a rectangular pad which has been described for manufacturing the women's product. Consequently, the rectangular pad and the truncated triangular pad **only** assume the bowed shape given by the pants. With respect to this teaching the skilled person has no reason to abandon the unit pants/pad for a single pad assuming a shape independent of that of the pants.

Therefore none of the documents D1 and D2 gives, alone or in combination with one another, any hint to the skilled person of providing a narrowing shape of the first end of the pad with an elastic device as specified in Claim 1 of the patent application in suit.

6.5 It follows from the above that it was not obvious to arrive at the claimed male incontinence guard in view of the cited prior art. Therefore, the subject-matter of Claim 1 is considered to involve an inventive step set out in Articles 52(1) and 56 EPC.

6.6 Claim 1 being allowable, the same applies to the dependent claims 2 and 3 whose patentability is supported by that of Claim 1.

Order

for these reasons it is decided that:

1. The decision under appeal is set aside
2. The case is remitted to the first instance with the order to grant a patent in the following version:

Claims: 1 filed on 4 October 1996
2 and 3 filed on 6 March 1995

Description: pages 2, 3, 6, 7 filed on 4 October 1996
pages 1, 4, 5, 8 as originally filed
page 2a filed with letter of 6 August 1993

Drawings: sheets 1/2 and 2/2 as filed with letter of
6 August 1993.

The Registrar:



S. Fabiani

The Chairman:



H. Seidenschwarz