

## ADVISORY OPINION on the Technical Scope of a Patent Invention

Advisory Opinion on the Technical Scope of a Patent Invention  
No. 2014-600045

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The advisory opinion on the technical scope of a patent invention for Patent No. 5135379 is stated and concluded as follows:

### Conclusion

The “absorbent article” indicated in the Drawing A and explanatory document A and the absorbent material in the Demandant’s Exhibit No. 1 belongs within the same technical scope of the invention claimed in Patent No. 5135379.

### Reason

#### First. Objective for the request

The request has been made to seek an advisory opinion regarding the subject case and to determine whether the “absorbent article” (hereinafter, referred to as “Article A”) indicated in the Drawing A and explanatory document A and the absorbent material indicated in Demandant’s Exhibit No. 1 belong within the same technical scope of the invention described in Claim 1 of Patent No. 5135379.

It should be noted that in the request seeking for an advisory opinion for this case, no demandee exists. Due to the non-existence of any demandee, the Demandant claims that in the Petition dated October 15, 2014, Article A in the subject case was sold in a foreign country but that a detailed investigation to verify this was difficult. This resulted in it being impossible to specify, the other party, that is, the demandee.

#### Second. Subject Patent Invention

## 1. Particulars of procedures

Patent Application	April 7, 2010
Notice of reasons for refusal	September 5, 2012
Written opinion and Amendment	October 22, 2012
Grant of Patent	November 2, 2012
Registration of Patent	November 16, 2012
Request for Advisory Opinion	September 16, 2014
Petition	October 15, 2014
Notice of matters to be examined	October 21, 2014
Oral proceedings statement brief	October 29, 2014
Petition	November 7, 2014
Oral proceedings and Examination of evidence	November 7, 2014

The evidence will be abbreviated as “Demandant No. 1” for “Demandant’s Evidence No. 1”.

## 2. Subject Patent Invention

The invention described in Claim 1 in Patent No. 5135379 will be judged against Demandant No. 2 and Demandant No. 4 (hereinafter, referred to as “Patent invention 1”) specified below, as viewed from the claims, the patent specification, and the description of the drawings based on the matters described in Claim 1 of the Patent No. 5135379..

The constituent components in Patent invention 1 will be separately described as follows (hereinafter, referred to as “constituent component A”, for example):

It should be noted that the following will be separately described, as it originally was indicated in the request for advisory opinion by the demandant, and this appears to be appropriate, and thus, presented here as is.

“[Claim 1]

- A. An absorbent article comprising: a chassis; and an absorber having a same color as the chassis, wherein:
- B. the chassis has a front waistline region, a rear waistline region, and a crotch region intervened between the front waistline region and the rear waistline region;
- C. the absorber is provided closer to a skin contact surface side of the absorbent article than the chassis, over the crotch region to the front waistline region and the rear waistline region;
- D. in the front waistline region and the rear waistline region, a plurality of waistline

- elastic members is provided along a widthwise direction of the absorbent article;
- E. in the crotch region, the waistline elastic member provided in the front waistline region and the waistline elastic member provided in the rear waistline region are arranged so as not to come in contact with each other;
  - F. in the front waistline region or the rear waistline region, an identifier of linear shape is provided so as to be visually recognizable from only a non-skin contact surface side of the absorbent article, in a first region which is provided with the absorber, and to be visually recognizable from both the non-skin contact surface side and the skin contact surface side of the absorbent article, in a second region which is not provided with the absorber; and
  - G. the identifier is arranged over the first region and the second region;
  - H. out of the plurality of waistline elastic members, the waistline elastic members which make up the identifier are elastic members for front leg-hole gathers provided in the front waistline region and elastic members for rear leg-hole gathers provided in the rear waistline region;
  - I. the elastic members for front leg-hole gathers are disposed linearly; and
  - J. the elastic members for rear leg-hole gathers are disposed while curving along a region forming a leg-hole opening.”

### **Third. Article A**

#### **1. Material relating to Article A**

The demandant attached, as documents for describing Article A, “the Drawing A and explanatory document A” (Demandants 1-1 to 1-3, and Demandants 3-1 to 3-4), and presented as Demandant’s Exhibit No. 1, which is of itself Article A.

Article A is the “absorbent article” indicated in “the Drawing A and explanatory document A” and Demandant’s Exhibit No. 1.

#### **2. Drawing A and explanatory document A**

In accordance with the Drawing A and explanatory document A, the following can be perceived.

- (1) At the right side of Demandant No. 1-1 and at the left side of Demandant No. 1-2, there is a design showing that Article A is designed to be worn on a human body.
- (2) In accordance with Demandant No. 1-3, when Article A is placed on a mannequin of a human body, it can be worn naturally.
- (3) When Demandant No. 1-3 and the Demandants 3-1 to 3-4 are considered

altogether, Article A has a waistline region shown by S10A-1 and S10B-1 and a crotch region shown by S20-1.

- (4) In accordance with Demandant No. 1-3 and Demandants 3-1 to 3-4, in Article A, the waistline region except for region X-1 is gray, and the crotch region and regions X-1 (two locations) are white.
- (5) The waistline region has a plurality of ring-shaped objects shown by 90F-1, 100-1, 92-1, and 91-1 in the height direction when worn.
- (6) Of the plurality of ring-shaped objects, the leg-hole objects 100-1 and 92-1 have a shorter interval than the other objects labeled 90F-1 and 91-1.
- (7) The front-side leg-hole object 100-1 is linear, and the back-side leg-hole object 92-1 is curved along the outer shape.
- (8) The leg-hole objects 100-1 and 92-1 having a shorter interval cannot be perceived from one side (Demandants 3-1, 3-3) and can be perceived from the other side (Demandants 3-2, 3-3) in the crotch region S20-1 that correspond to a crotch when worn and regions X-1 (two locations) on both sides, in connection therewith. However, the objects can be perceived from both sides in the region other than the above-described regions (Demandants 3-1 to 3-4).
- (9) In the waistline region, wrinkles are formed in a portion other than the ring-shaped objects.
- (10) The member 2-1 in the crotch region S20-1 and the regions X-1 (two locations) on both sides in connection with the crotch region S20-1 have different features from the members in other regions.
- (11) In the crotch region, there is no ring-shaped object.

### 3. Demandant's Exhibit No. 1

Demandant's Exhibit No. 1 is shown in the inspection record as follows: In the decision of the subject case, the photos are omitted.

“(1) The package is as set forth in the Demandant's Exhibit No. 1-1 and the Demandant's Exhibit No. 1-2.

In the package, 20 items of Articles A are packaged in a folded state.

- (2) When one Article A is taken out, the article is first in a folded state and then opened, and the size in a planar view when the article is fully opened is 70 cm in length, 18.7 cm in central width, and 55 g in weight.
- (3) When Article A is placed on the lower half of a mannequin of a human body having a 70.5 cm waistline, with one side facing forward, the resultant shape is natural. However, when it is worn while the other side is facing forward, the

resultant shape is unnatural.

In the natural shape, a mark “F” is placed at the front outer side, and a mark “B” is placed at the back outer side.

(4) Article A is formed by a cloth-like member in an approximate cylinder when naturally worn, and at the lower part thereof, a crotch member is formed. As a whole, the article expands and contracts around the axis of a human body.

(5) In the cloth-like member in an approximate cylinder, a plurality of ring-shaped members of which some portions are marked with felt-tip pens in black, red, and blue are formed in the vertical direction of a human body, that is, in the waist portion and the leg portion.

The ring-shaped member has flexibility.

The flexibility created by the ring-shaped member forms wrinkles in the cloth-like member in an approximate cylinder.

(6) When the portion, which corresponds to the right and left sides of a human body when worn, is cut in the vertical direction of a human body, and then, developed, the result is as indicated in Demandant’s Exhibit No. 3-1, the Demandant’s Exhibit No. 3-3, Demandant’s Exhibit No. 3-2, and Demandant’s Exhibit No. 3-4.

(7) Inside the crotch member, a different member harder than the cloth-like member is provided, and this corresponds to portion 2-1 in X-1 (two locations) of Demandant’s Exhibit No. 3-1 and Demandant’s Exhibit No. 3-2.

(8) When a pseudo urine composed mainly of 150 cc of sodium chloride is dropped onto a crotch member at a side coming into contact with the human body when worn, the liquid is absorbed by a different member provided inside the crotch member.

(9) Article A made of the cloth-like member in an approximate cylinder and the crotch member is “white” in color, and the different member provided inside the crotch member is “white” in color.

(10) The interval, when worn, between the ring-shaped members (92-1 and 100-1 of Demandant’s Exhibit No. 3-1 and Demandant’s Exhibit No. 3-2) formed in the leg-hole is shorter than that between the ring-shaped members (91-1 and 90F-1) formed in the waistline.”

#### 4. Recognition of Article A

##### (1) Article A

The object indicated in “the Drawing A and explanatory document A” and Demandant’s Exhibit No. 1 are recognized to be the identical article (see (1) and

(6) in the inspection record).

In accordance with (3) and (4) in the inspection record, Article A is worn on the waist area of a human body, when worn naturally; and in addition, the skin contact surface side, the skin non-contact surface side, and both the front and back can be specified.

Therefore, Demandants 3-1 and 3-3 show the skin contact surface side, where the right side is in the front and the left side is in the back; and Demandants 3-2 and 3-4 show the skin non-contact surface side, where the right side is in the front and the left side is in the back.

That is, in Demandants 3-1 and 3-2, it is possible to say that the S10A-1 is the front waistline region and the S10B-1 is the back waistline region.

In accordance with (5) in the inspection record, the ring-shaped member in (5) in the inspection record corresponds to a ring-shaped object shown in 90F-1, 100-1, 92-1, and 91-1 in Demandants 3-1 and 3-2. The ring-shaped member (ring-shaped object) is a flexible member.

In accordance with (7) and (8) in the inspection record, in the crotch region S20-1 and regions X-1 (two locations) on the both sides in connection therewith in Demandants 3-1 and 3-2, a different member 2-1 is provided that absorbs liquid into itself.

In accordance with “the Drawing A and explanatory document A”, the waistline region except for region X-1 is gray, and the crotch region and regions X-1 (two locations) are white (see above 2. (4)); however, in accordance with (9) in the inspection record, both are white. The reason for this is that in the portion that appears to be gray in “the Drawing A and explanatory document A”, the thickness of the cloth-like member is relatively thinner, and thus, the black color in the background passes through the cloth-like member.

When Article A is orderly summarized to correspond to the constituent components A. to J. of Patent Invention 1, Article A is recognized to include the following configurations (hereinafter, referred to as “configuration a”, etc.). For reference, reference numerals in Demandants 3-1 and 3-2 are added.

- “a. An article, comprising: a white cloth-like member, a crotch member, and a different member 2-1 that absorbs liquid, wherein
  - i. the cloth-like member and the crotch member include a front waistline region S10A-1, a back waistline region S10B-1, and a crotch region S20-1 located between the front waistline region and the back waistline region;
  - u. the different member 2-1 is provided closer to a skin contact surface side

than the cloth-like member and the crotch member, and provided in the crotch region S20-1 and in regions X-1 (two locations) on the both sides in connection therewith;

e. in the front waistline region S10A-1 and the back waistline region S10B-1, a plurality of ring-shaped flexible members 90F-1, 100-1, 92-1, and 91-1 are provided in the verticle direction when worn;

o. in the crotch region S20-1, the ring-shaped flexible member does not exist;

ka. when worn, the ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween cannot be perceived from a contact surface side and can be perceived from a non-contact surface side, in the crotch region S20-1 and regions X-1 (two locations) on the both sides in connection with the crotch region S20-1, and can be perceived from the both sides in a remaining region Y-1;

ki. the ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween are provided over the crotch region S20-1, the regions X-1 (two locations) on the both sides in connection therewith, and the remaining region Y-1;

ku. the ring-shaped flexible members 100-1 and 92-1, having a shorter interval, out of the plurality of ring-shaped flexible members are provided in a leg-hole, and wrinkles are formed, by the flexible members, in the cloth-like member;

ke. the front-side flexible member 100-1 having a short interval is linear; and

ko. the back-side flexible member 92-1 having a short interval is curved along the outer shape.

#### **Fourth. Comparison and decision from the examination**

##### **1. Subject Patent Invention 1**

Whether or not Article A satisfies the constituent components A to J of Patent Invention 1 will be examined by sequentially correlating and comparing the constituents component to the configuration of Article A such as correlating/comparing the constituent component A to the configuration a of Article A, and correlating/comparing the constituent component B to the configuration i thereof.

##### **(1) Constituent component A**

It is obvious based on common general knowledge that the “cloth-like member and the crotch member” in Article A correspond to the “chassis” in Patent Invention 1.

The “different member 2-1” in Article A absorbs liquid, and thus, it corresponds to the “absorber” in Patent Invention 1. Therefore Article A can be considered to be “the absorbent article”.

“The cloth-like member, the crotch member, and the different member 2-1 that absorbs liquid” in Article A are all “white”, and thus, these correspond to the “absorber having a same color as the chassis” in Patent Invention 1.

Therefore, the configuration a in Article A satisfies the constituent component A.

(2) Constituent component B

As stated in (1), “the cloth-like member and the crotch member” in Article A corresponds to “the chassis” in Patent Invention 1.

Therefore, the configuration i in Article A satisfies the constituent component B.

(3) Constituent component C

As stated in (1), “the different member 2-1” in Article A corresponds to “the absorber body” in Patent Invention 1.

The feature in Article A that “the different members 2-1” are “provided in the crotch region S20-1 and the regions X-1 (two locations) on the both sides in communication therewith” corresponds to the feature in Patent Invention 1 that “the absorber” is “provided over the crotch region to the front waistline region and the rear waistline region”.

Therefore, the configuration u in Article A satisfies the constituent component C.

(4) Constituent component D

It may be possible to say that the “flexible member” in Article A is the “elastic member” in Patent Invention 1.

Further, it may be possible to say that the feature in Article A that “the plurality of ring-shaped flexible members are provided in the virticle direction when worn” is the feature that the plurality of elastic members are provided along the widthwise direction around the waistline.

Therefore, the feature in Article A, namely that “a plurality of ring-shaped



flexible members 90F-1, 100-1, 92-1, and 91-1 are provided in the vertical direction when worn” corresponds to the feature in Patent Invention 1, which is that “a plurality of waistline elastic members are provided along the widthwise direction of the absorbent article”.

Therefore, the configuration e in Article A satisfies the constituent component D.

(5) Constituent component E

As in (4), it may be possible to say that the “flexible member” in Article A is the “elastic member”.

In Article A, “the ring-shaped flexible member does not exist” in “the crotch region S20-1”, and thus, the feature in Article A, which is that “in the crotch region S20-1, the ring-shaped flexible member does not exist” corresponds to the feature in Patent Invention 1, which is that “in the crotch region, the waistline elastic member provided in the front waistline region and the waistline elastic member provided in the rear waistline region are arranged so as not to come in contact with each other”.

Therefore, the configuration o in Article A satisfies the constituent component E.

(6) Constituent component F

As in (4), it may be possible to say that the “flexible member” in Article A is the “elastic member”.

The feature in Article A, namely that the “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” have become linear in shaped according to Demandants 3-1 and 3-2 which have a shorter interval therebetween. Thus, it is possible to visually distinguish from the other “ring-shaped flexible members 90F-1 and 91-1”.

The “linear discrimination unit” in Patent Invention 1 is a “visually recognizable” object, and as an embodiment, it includes an “object having a short interval between the elastic members” (paragraph 0069 and 0090).

Therefore, the “ring-shaped flexible members having a short interval therebetween” in Article A corresponds to the “identifier of linear shape” in Patent Invention 1.

“The crotch region S20-1 and the regions X-1 (two locations) on the both sides in connection therewith” in Article A are regions in which the “different member 2-1”, that is, the “absorber” is provided, and of these, “regions X-1

(two locations) on the both sides in connection therewith” corresponds to “in the front waistline region or the rear waistline region, the first region which is provided with the absorber” in Patent Invention 1.

Further, as in Third. 4. o, in the “crotch region” in Article A, “the ring-shaped flexible members do not exist”, and thus, the “remaining region Y-1” in Article A corresponds to the “second region which is not provided with the absorber” in Patent Invention 1.

Then, the configuration ka in Article A satisfies the constituent component F.

(7) Constituent component G

As in (6), the “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” in Article A corresponds to the “identifier of linear shape” in Patent Invention 1.

“Regions X-1 (two locations) on both sides in connection therewith” in Article A corresponds to the “first region” in Patent Invention 1 and the “remaining region Y-1” corresponds to the “second region”.

Therefore, the configuration ki in Article A satisfies the constituent component G.

(8) Constituent component H

As in (4), the “plurality of ring-shaped flexible members” in Article A corresponds to the “plurality of waistline elastic members” in Patent Invention 1, and as in (6), the “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” in Article A corresponds to the “identifier” in Patent Invention 1.

Then, the flexible nature created by of the “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” forms wrinkles in the cloth-like member in an approximate cylinder shape.

The “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” in Article A are “provided in the leg-holes”, and “the flexible members 100-1 having a short interval therebetween” are provided at the front side and the “flexible member 92-1s having a short interval therebetween” is provided at the back side, with both creating the “ring-shape”.

Both members are “provided in the leg-hole, and due to the flexible nature of the members, wrinkles are formed in the cloth-like member”. Such “wrinkles” can also be called “gathers” (Demandant No. 5-3)

That is, the “ring-shaped flexible members 100-1 and 92-1 having a short interval therebetween” in Article A corresponds to “the waistline elastic members which make up the identifier” in Patent Invention 1, “Flexible members 100-1 having a short interval therebetween” at the front side corresponds to the “elastic members for front leg-hole gathers”, and “flexible members 92-1 having a short interval therebetween” provided at the back side corresponds to the “elastic members for rear leg-hole gathers”.

Therefore, the configuration ku in Article A satisfies the constituent component H.

(9) Constituent component I

As in (8), the “flexible members 100-1 having a short interval therebetween” at the front side in Article A corresponds to the “elastic members for front leg-hole gathers” in Patent Invention 1.

Therefore, the configuration ke in Article A satisfies the constituent component I.

(10) Constituent component J

As in (8), the “flexible members 92-1 having a short interval therebetween” at the front side in Article A corresponds to the “elastic members for rear leg-hole gathers” in Patent Invention 1.

“Curved along the outer shape” in Article A corresponds to “along a region which forms a leg-hole opening” in the subject patent invention 1.

Therefore, the configuration ko in Article A satisfies the constituent component J.

(11) Summary

Therefore, all the configurations a to ko in Article A satisfy the constituent components A to J in Patent Invention 1.

**Sixth. Conclusion**

As described above, Article A satisfies all the constituent components A to J in Patent Invention 1, and thus, Article A belongs within the technical scope of Patent Invention 1.

Therefore, the advisory opinion has been made and concluded.

November 21, 2014

Trial Examiner-in-Chief

JPO Trial Examiner Toshihiko Kuribayashi

JPO Trial Examiner Shigenari Chiba

JPO Trial Examiner Makoto Watanabe

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[Classification of Advisory Opinion] P12.1 -YA (A41B)

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It is hereby certified that the foregoing is a true copy of the matters recorded on file.

Certification date: November 21, 2014 Trial Clerk Takeshi Kurita