

ADVISORY OPINION on the Technical Scope of a Patent Invention

Advisory Opinion on the Technical Scope of a Patent Invention

No. 2014-600059

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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 Drawings and explanatory document of Article A and in the Demandant’s Exhibit No. 1 belongs to the technical scope of the invention in Patent No. 5135379.

Reason

First. Objective for the request

The object of claim for the advisory opinion of the subject case is to seek an advisory opinion that the “absorbent article” (hereinafter, referred to as “Article A”) indicated in the Drawings and explanatory document of Article A and in the Demandant’s Exhibit No. 1 belongs to the technical scope of the invention according to claim 1 of Patent No. 5135379.

It should be noted that in the request for the advisory opinion of the subject case, a claimee does not exist, and as the reason for this non-existence, the Demandant claims that Article A of the subject case was sold in a foreign country and the detailed investigation was difficult, as a result of which it was not possible to specify the other party, that is, a claimee (see point 6(1) of Advisory Opinion Request).

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	December 17, 2014

Notice of matters to be examined	January 15, 2015
Oral proceedings statement brief	January 21, 2015
Indication Clarification	January 27, 2015
Oral proceedings and Examination of evidence	January 27, 2015

Indication Clarification submitted on January 21 2015 is withdrawn (see Demandant Box 1 of the First Oral Proceeding Record).

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

2. Subject patent Invention

The invention described in claim 1 of the scope of claims in Patent No. 5135379 of the subject case (Demandant No. 2) (hereinafter, referred to as “subject patent invention 1”) is as specified, as viewed from the claims, the patent specification, and the description of the drawings, in accordance with the matter described in claim 1 of the claims.

The constituent components in the subject 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 originally 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 body 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, a linear discrimination unit 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 absorbent; and

- G. the discrimination unit 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 discrimination unit 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 the documents for describing Article A, “the Drawings and explanatory document of Article A”, and presented the Demandant’s Exhibit No. 1 that is Article A itself.

Article A is the “absorbent article” indicated in Demandant’s Exhibit No. 1 described in Demandants 1-3 and 3-1 to 3-4 of “the Drawings and explanatory document of Article A” and picked out from the packages shown in Demandants 1-1 to 1-2 (See Demandant Box 3 of the First Oral Proceeding Record).

2. Drawings and explanatory document of Article A

In accordance with the Drawings and explanatory document of Article A, the following can be perceived.

- (1) At the right side of the Demandant No. 1-1 and at the left side of the Demandant No. 1-2, there is a design that could recall association that Article A is worn on a human body.
- (2) In accordance with the Demandant No. 1-3, when Article A is worn on a mannequin of a human body, it is naturally worn.
- (3) When the 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 the Demandant No. 3-1 to 3-4, in Article A, the waistline region except the region X-1 is gray, and the crotch region and the 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 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 and 3-3) and can be perceived from the other side (Demandants 3-2 and 3-4) in the crotch region S20-1 corresponding to a crotch when worn and the regions X-1 (two locations) on both sides in communication therewith; however, the objects can be perceived from the 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 the both sides in communication with the crotch region S20-1 has something different from the members in other regions.
- (11) In the crotch region, there is no ring-shaped object.

3. Demandant's Exhibit No. 1

The 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 articles A are packaged in a folded state.

- (2) One Article A is taken out and is worn on a mannequin of the lower half of a human body having 73.5 cm in waistline while one side is faced forward, the resultant shape is natural, and when it is worn while the other side is faced forward, the resultant shape is unnatural
- (3) 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) Ring-shaped members of the cloth-like member in an approximate cylinder are marked in color.
- (6) A plurality of ring-shaped members are formed in the height direction of a human body, that is, in a waist portion and a leg portion.
- (7)The ring-shaped member has flexibility.
- (8)The flexibility effect by the ring-shaped member forms wrinkles in

the cloth-like member in an approximate cylinder.

- (9) The article in a folded state is opened, and the size in a planar view when the article is extended is 73.5 cm in length, 19 cm in central width, and 63 g in weight.
- (10) When the portion corresponding to the right and left of a human body when worn is cut in the height direction of a human body, and then, developed, the result is as indicated in the Demandant's Exhibit No. 3-1 to 3-4.
- (11) Inside the crotch member, a different member harder than the cloth-like member is provided, and this corresponds to the portion 2-1 in the X-1 (two locations) of the Demandant's Exhibit No. 3-1 and the Demandant's Exhibit No. 3-2.
- (12) When a pseudo urine composed mainly of 150 cc of sodium chloride is dropped onto a crotch member at a side contacting a human body when worn, the liquid is absorbed by the different member provided inside the crotch member.
- (13) 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.
- (14) The interval, when worn, between the ring-shaped members formed in the leg-hole is shorter than that between the ring-shaped members formed in the waistline."

4. Recognition of Article A

(1) Article A

The object indicated in "the Drawings and explanatory document of Article A" and the Demandant's Exhibit No. 1 are recognized as an identical article (see (1) and (10) of the inspection record).

In accordance with (2) and (4) of the inspection record, Article A is worn on a waist portion of a human body, when naturally worn, and the skin contact surface side, the skin non-contact surface side, front-back can be specified.

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

That is, in the 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 rear waistline region.

In accordance with (6), (7) and (8) in the inspection record, the ring-shaped member in (6), (7) and (8) in the inspection record corresponds to a ring-shaped object shown in 90F-1, 100-1, 92-1, and

91-1 in the Demandants 3-1 and 3-2. The ring-shaped member (ring-shaped object) is a flexible member.

In accordance with (11) and (12) in the inspection record, in the crotch region S20-1 and regions X-1 (two locations) on the both sides in communication therewith in the Demandants 3-1 and 3-2, a different member 2-1 is provided which absorbs liquid into itself.

In accordance with “the Drawings and explanatory document of Article A”, the waistline region except the region X-1 is gray, and the crotch region and the regions X-1 (two locations) are white (see above 2. (4)); however, in accordance with (13) in the inspection record, both are white. The reason for this is that in the portion that appears to be gray in “the Drawings and explanatory document of Article A”, the thickness of a cloth-like member is thin, 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 the subject patent invention 1, Article A is recognized to include the following configurations (hereinafter, referred to as “configuration a”, etc.). For reference, reference numerals in the 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 rear waistline region S10B-1, and a crotch region S20-1 intervened between the front waistline region and the rear 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 communication therewith;

e. in the front waistline region S10A-1 and the rear waistline region S10B-1, a plurality of ring-shaped flexible members 90F-1, 100-1, 92-1, and 91-1 are provided in the height 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 the regions X-1 (two locations) on the both sides in communication 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 communication 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 the subject patent invention 1 will be examined by sequentially corresponding the constituent component to the configuration of Article A such as corresponding the constituent component A to the configuration a of Article A, and corresponding the constituent component B to the configuration i thereof.

(1) Constituent component A

It is obvious in view of the common general knowledge that the “cloth-like member and the crotch member” in Article A generally correspond to the “chassis” in the subject patent invention 1.

The “different member 2-1” in Article A absorbs liquid, and thus, it corresponds to the “absorber body” in the subject patent invention 1 and it can be hence said that Article A is “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 body having a same color as the chassis” in the subject 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 the subject 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 the subject 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 the subject patent invention 1 that “the absorber body” 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”.

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

Therefore, the feature in Article A that “a plurality of ring-shaped flexible members 90F-1, 100-1, 92-1, and 91-1 are provided in the height direction when worn” corresponds to the feature in the subject patent invention 1 that “a plurality of waistline elastic members are provided along a 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 that “in the crotch region S20-1, the ring-shaped flexible member does not exist” corresponds to the feature in the subject patent invention 1 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 that the “ring-shaped flexible members 100-1 and

92-1 having a short interval therebetween” in Article A are linear when developed in the Demandants 3-1, 3-2 and have a short interval therebetween, and thus, it is possible to visually distinguish from the other “ring-shaped flexible members 90F-1 and 91-1”.

The “linear discrimination unit” in the subject 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 “linear discrimination unit” in the subject patent invention 1.

“The crotch region S20-1 and the regions X-1 (two locations) on the both sides in communication therewith” in Article A are regions in which the “different member 2-1”, that is, the “absorber body” is provided, and of these, the “regions X-1 (two locations) on the both sides in communication therewith” corresponds to “in the front waistline region or the rear waistline region, a first region which is provided with the absorber body” in the subject 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 body” in the subject 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 “linear discrimination unit” in the subject patent invention 1.

The “regions X-1 (two locations) on the both sides in communication therewith” in Article A corresponds to the “first region” in the subject 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 the subject 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 “discrimination unit” in the subject patent invention 1.

Then, the flexibility effect 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.

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

The both members are “provided in the leg-hole, and by the flexible members, wrinkles are formed in the cloth-like member”. Such “wrinkles” can also be called “gathers” (Demandant No. 4-3)

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 discrimination unit” in the subject patent invention 1, the “flexible members 100-1 having a short interval therebetween” provided at the front side corresponds to the “elastic members for front leg-hole gathers”, and the “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 the subject 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 the subject 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, the configurations a to ko in Article A all satisfy the constituent components A to J in the subject patent invention.

Fifth. Conclusion

As described above, Article A satisfies all the constituent components A to J in the subject patent invention 1, and thus, Article A belongs to the technical scope of the subject patent invention.

Therefore, the advisory opinion is made as concluded.

February 5, 2015

Trial Examiner-in-Chief	JPO Trial Examiner Shigenari Chiba
	JPO Trial Examiner Toyohide Watanabe
	JPO Trial Examiner Tsuyoshi Kumakura

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

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

Certification date: February 5, 2015 Trial Clerk Katsumi Kimura