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D E C I S I O N
of 28 February 2003

Case Number: T 0472/02 - 3.2.6

Application Number: 94111955.4

Publication Number: 0695541

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:

Absorbent structure comprising an upper layer and a lower layer of absorbent gelling material particles and method of making such a structure

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponents:

Paul Hartmann AG
SCA Hygiene Products AB

Headword:

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Relevant legal provisions:

EPC Art. 108
EPC R. 65(1)

Keyword:

Decisions cited:

"Form of appeal - missing statement of grounds"

Catchword:

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Case Number: T 0472/02 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 28 February 2003

Party as of right:
(Opponent I)

Paul Hartmann AG
Paul-Hartmann-Strasse 12
D-89522 Heidenheim (DE)

Representative:

Friz, Oliver
Patentanwälte
Dreiss, Fuhlendorf, Steimle & Becker
Gerokstrasse 6
D-70188 Stuttgart (DE)

Appellant:
(Opponent II)

SCA Hygiene Products AB
S-405 03 Göteborg (SE)

Representative:

Harrison, Michael Charles
Albihns GmbH
Grasserstrasse 10
D-80339 München (DE)

Respondent:
(Proprietor of the patent)

THE PROCTER & GAMBLE COMPANY
One Procter & Gamble Plaza
Cincinnati
Ohio 45202 (US)

Representative:

Bottema, Johan Jan
Procter & Gamble GmbH
Patent Department
Sulzbacher Strasse 40-50
D-65824 Schwalbach am Taunus (DE)

Decision under appeal:

**Interlocutory decision of the Opposition Division
of the European Patent Office posted 4 April 2002
concerning maintenance of European patent
No. 0 695 541 in amended form.**

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Pricolo
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. In its decision dated 4 April 2002 the Opposition Division maintained the European patent No. 0 695 541 in amended form (Article 102(3) EPC) on the basis of the claims according to the second auxiliary request filed during the oral proceedings held on 27 February 2002.
- II. All the parties lodged an appeal against this decision. The notices of appeal of the patentee, opponent I and opponent II were received at the EPO on 5 June, 10 May and 13 May 2002, respectively. The appeal fees were paid simultaneously with the filing of the appeals.
- III. The patentee and opponent I withdrew their appeals with letter dated 16 July 2002 and 14 February 2003, respectively.
- IV. A statement of grounds of opponent II was not received at the EPO within the time limit of four months provided for in Article 108 EPC.

By a communication dated 4 September 2002 and sent by registered letter, the Registry of the Board informed the appellant (opponent II) that no statement of grounds had been filed and that the appeal would be rejected as inadmissible. The appellant was invited to file its observations within two months.

No response to this communication was received at the EPO.

Reasons for the Decision

1. After the withdrawal of the appeals filed by the patentee and opponent I, the Board has to take a decision in respect of the remaining appeal of opponent II.

2. As no written statement setting out the grounds of appeal has been filed and the notice of appeal does not contain anything that could be regarded as a statement of grounds pursuant to Article 108 EPC the appeal of opponent II has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau