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**D E C I S I O N**  
**of 18 January 2005**

**Case Number:** T 0116/04 - 3.2.6

**Application Number:** 95927351.7

**Publication Number:** 0778763

**IPC:** A61F 13/46

**Language of the proceedings:** EN

**Title of invention:**

Thin absorbent article having wicking and crush resistant properties

**Patentee:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponents:**

The Procter & Gamble Company  
SCA Hygiene Products AB

**Headword:**

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**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

"Revocation of the patent requested by patent proprietor"

**Decisions cited:**

T 0073/84

**Catchword:**

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Case Number: T 0116/04 - 3.2.6

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.6  
of 18 January 2005

**Appellant:** The Procter & Gamble Company  
(Opponent I) One Procter & Gamble Plaza  
Cincinnati, Ohio 45202 (US)

**Representative:** Boon, Graham Anthony  
Elkington and Fife LLP,  
Prospect House  
8 Pembroke Road  
Sevenoaks,  
Kent TN13 1XR (GB)

**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
(Proprietor of the patent) 401 North Lake Street  
Neenah, Wisconsin 54956 (US)

**Representative:** Davies, Christopher Robert  
Frank B. Dehn & Co.,  
European Patent Attorneys  
179 Queen Victoria Street  
London EC4V 4EL (GB)

**Other Party:** SCA Hygiene Products AB  
(Opponent II) S-40503 Göteborg (SE)

**Representative:** Egeröd, Lisbeth  
Ström & Gulliksson IP AB  
Lindholmospiren 5  
S-417 56 Göteborg (SE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 5 November 2003  
rejecting the opposition filed against European  
patent No. 0778763 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** P. Alting van Geusau  
**Members:** G. L. De Crignis  
J. H. Van Moer

## **Summary of Facts and Submissions**

- I. The opposition division rejected the opposition against European patent No. 0 778 763 with decision posted on 5 November 2003.
  
- II. The appellant (opponent 01) appealed against this decision by a letter filed on 20 December 2003, paid the fee for appeal on the same day and filed a Statement of Grounds of Appeal on 9 March 2004. It requested that the patent be revoked.
  
- III. In a letter dated 6 January 2005, the respondent (patentee) withdrew its approval of the text of the patent in the form in which it was upheld by the opposition division, or in any other form, and requested revocation of the patent.

## **Reasons for the Decision**

1. The appeal is admissible.
  
2. It follows from Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's request for revocation of its patent, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. European patent No. 0 778 763 is revoked.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau