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**Datasheet for the decision
of 5 March 2007**

Case Number: T 1130/06 - 3.2.06

Application Number: 97953406.2

Publication Number: 1011573

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:

Sanitary napkin having stabilizing members in the end regions

Patentee:

THE PROCTER & GAMBLE COMPANY

Opponent:

Kimberly-Clark Corporation
Paul Hartmann AG

Headword:

-

Relevant legal provisions:

EPC Art. 108

EPC R. 65(1)

Keyword:

"Form of appeal (Appellant I) - in existence (no) - fee -
refund (yes)"

"Form of appeal (Appellant II) - missing statement of grounds"

Decisions cited:

T 0016/82, T 0324/90, T 0445/98

Catchword:

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Case Number: T 1130/06 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 5 March 2007

Appellant I:
(Patent proprietor)

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

Representative:

Samuels, Lucy Alice
Gill Jennings & Every LLP
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Appellant II:
(Opponent)

Kimberly-Clark Corporation
401 North Lake Street
Neenah
Wisconsin 54956-0349 (US)

Representative:

Davies, Christopher Robert
Frank B. Dehn & Co.
St Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Respondent:

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

Representative:

Friz, Oliver
Patentanwälte
Dreiss, Fuhlendorf, Steimle & Becker
Gerokstrasse 1
D-70188 Stuttgart (DE)

Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
15 May 2006 concerning maintenance of European
patent No. 1011573 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. de Crignis
K. Garnett

Summary of Facts and Submissions

I. These are appeals against the interlocutory decision of the Opposition Division of the European Patent Office dated 15 May 2006, by virtue of which European Patent No. 1011573 was maintained in amended form.

Appellant I (patentee) filed a notice of appeal on 21 July 2006 and paid the fee for the appeal on the same day.

Appellant II (opponent 1) filed a notice of appeal on 25 July 2006 and paid the fee for the appeal on the same day.

Appeal by Appellant I

II. By a communication dated 2 August 2006, sent to the representative of Appellant I by registered letter with advice of delivery, and headed "Loss of rights, Rule 36(3), third sentence EPC", the Board stated that the notice of appeal had not been duly signed and that the appeal was therefore deemed not to have been filed. Appellant I was notified that if it disagreed it could, within two months of notification of the communication, apply for a decision pursuant to Rule 69(2). Attention was also drawn to the possibility of filing a request for re-establishment of rights under Article 122 EPC.

III. Appellant I replied by letter dated 9 August 2006, pointing out that an invitation to provide the missing signature within a time limit, as required by EPC Rule 36(3), second sentence, had not been received. The appellant requested that the notice sent by the Board

be withdrawn and that an opportunity to provide the missing signature be given.

IV. During a telephone consultation with the representative of Appellant I on 17 October 2006, the representative informed the Registry of the Board that the missing signature would not be provided and that the appeal proceedings should therefore continue on the basis of Appellant II's appeal alone.

V. By a further communication dated 30 October 2006 sent by registered letter, Appellant I was informed that pursuant to Rule 36(3), third sentence, EPC, the notice of appeal was deemed not to have been received and the appeal was deemed not to have been filed. Appellant I replied by letter dated 5 February 2007 stating that if the appeal was deemed never to have been filed then the appeal fee should be refunded. However, if the appeal was deemed to have been filed, Appellant I confirmed the withdrawal of both the appeal and its request for oral proceedings.

Appeal by Appellant II

VI. By communication dated 30 October 2006 sent by registered letter with advice of delivery, Appellant II was informed by the Office that no statement of grounds of appeal appeared to have been filed and that, therefore, it was to be expected that the appeal would be rejected as inadmissible. Appellant II was invited to file observations within two months. Attention was also drawn to Article 122 EPC. Appellant II replied by letter dated 6 February 2007, confirming that it would neither file any submissions in response to the

official letter dated 30 October 2006 nor file grounds of appeal. In addition, Appellant II withdrew its request for oral proceedings and requested that the appeal proceedings be terminated.

Reasons for the Decision

Appeal by Appellant I

1. The notice of appeal by Appellant I was not signed, contrary to EPC Rule 36(3). As was pointed out by Appellant I's representative in her letter of 9 August 2006, however, the Communication dated 2 August 2006 was issued in error since at that date no invitation to sign the notice of appeal had been issued by the Office under EPC Rule 36(3), and therefore the conditions for the notice to be deemed not to have been received had not been satisfied.
2. Although Appellant I's representative originally asked for an opportunity to supply the missing signature, it is clear from what happened on 17 October 2006 (see paragraph IV, above) that by then this request was no longer being maintained and that the notice never would be signed. In these circumstances, the conditions for the notice to be deemed not to have been received by the Office can be regarded as having been satisfied on that date.
3. Since the notice of appeal is deemed not to have been received, the appeal is also deemed never to have existed and the appeal fee must be reimbursed. See eg, Decisions T 324/90 and T 445/98. In principle the fee

should be reimbursed automatically (see Decision J 16/82) but to avoid any uncertainty the Board will make an express order to this effect.

Appeal of Appellant II

4. As no written statement setting out the grounds of appeal has been filed by Appellant II and as the notice of appeal contains nothing that could be regarded as a statement of grounds of appeal pursuant to Article 108 EPC, the appeal has to be rejected as inadmissible (Article 108 EPC in conjunction with Rule 65(1) EPC).

Order

For these reasons it is decided that:

1. The appeal of Appellant I is deemed not to have been filed.
2. The appeal fee paid by Appellant I shall be reimbursed.
3. The appeal of Appellant II is rejected as inadmissible.

Registrar

Chair

C. Vodz

P. Alting van Geusau