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**Datasheet for the decision
of 21 May 2013**

Case Number: T 0873/11 - 3.3.09

Application Number: 01121751.0

Publication Number: 1295711

IPC: B32B 5/26, A61F 13/15

Language of the proceedings: EN

Title of invention:

A color printed laminated structure, absorbent article comprising the same and process for manufacturing the same

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponent:

KIMBERLY-CLARK WORLDWIDE, INC.

Headword:

-

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

"Non-approval of the granted or amended text of the patent by patentee: revocation of the patent"

Decisions cited:

T 0073/84, T 0725/06, T 1042/07

Catchword:

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Case Number: T 0873/11 - 3.3.09

D E C I S I O N
of the Technical Board of Appeal 3.3.09
of 21 May 2013

Appellant: KIMBERLY-CLARK WORLDWIDE, INC.
(Opponent) 401 North Lake Street
Neenah WI 54956 (US)

Representative: Chiva, Andrew Peter
Dehns
St Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Respondent: THE PROCTER & GAMBLE COMPANY
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Briatore, Andrea
Procter & Gamble Service GmbH
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
25 January 2011 concerning maintenance of
European patent No. 1295711 in amended form.

Composition of the Board:

Chairman: W. Sieber
Members: W. Ehrenreich
R. Menapace

Summary of Facts and Submissions

- I. In its interlocutory decision announced orally on 24 November 2010 and posted on 25 January 2011 the opposition division decided that the European patent No. 1 295 711 as amended met the requirements of the EPC.
- II. On 4 April 2011 the opponent (hereinafter: the appellant) filed an appeal and paid the prescribed fee on the same day. A statement setting out the grounds of appeal was filed on 20 May 2011. The appellant requested that the decision of the opposition division be set aside and the patent be revoked in its entirety. Oral proceedings were requested on an auxiliary basis.
- III. In its reply dated 19 December 2011 the proprietor (hereinafter: the respondent) requested, as main request, that the decision of the opposition division to maintain the patent in amended form be upheld, and filed two sets of claims as a basis for first and second auxiliary requests. Oral proceedings were requested in the event the patent could not be maintained according to the main request.
- IV. With a letter dated 30 July 2012 the appellant submitted that the respondent's requests should be refused for the reasons outlined in the grounds of appeal. The request for oral proceedings was maintained.
- V. Following the summons to attend oral proceedings issued on 6 March 2013 and a communication of the board posted on 28 March 2013, the respondent stated by letter dated 8 May 2013:

"The Patentee withdraws its approval to the text of the Patent as granted and does not intend to submit any amendment as a further request. Previously filed requests are also withdrawn."

VI. On 17 May 2013 the oral proceedings were cancelled.

Reasons for the Decision

1. The appeal is admissible.
2. Article 113(2) EPC requires that the EPO may decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. Agreement cannot be deemed to be given if the proprietor expressly states that he no longer approves the text of the patent as granted, does not intend to submit any amendment as a further request and withdraws previously filed requests, as done by letter dated 8 May 2013. In such a situation a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation, without going into the substantive issues (e.g. T 73/84, OJ EPO 1985, 241).
3. In a situation where the patent has to be revoked, the request for oral proceedings filed by the appellant is obsolete because the decision is fully in line with the request of the appellant (see, e.g., T 725/06).
4. The respondent has not explicitly withdrawn its request for oral proceedings. However, the respondent's

statement in the letter dated 8 May 2013 (see above) is considered to be equivalent to a withdrawal of the auxiliary request for oral proceedings (see T 1042/07).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar

The Chairman

M. Cañueto Carbajo

W. Sieber