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**Datasheet for the decision
of 22 June 2016**

Case Number: T 0051/12 - 3.2.06

Application Number: 99924486.6

Publication Number: 1082080

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

TEAR RESISTANT POROUS EXTENSIBLE WEB

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponent:

SCA Hygiene Products AB

Headword:

Relevant legal provisions:

EPC Art. 113(2), 101

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 2405/12

Catchword:



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Case Number: T 0051/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 22 June 2016

Appellant: SCA Hygiene Products AB
(Opponent) 405 03 Göteborg (SE)

Representative: Egeröd, Lisbeth
Valea AB
Box 1098
405 23 Gothenburg (SE)

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

Representative: Briatore, Andrea
Procter & Gamble Service GmbH
IP Department
Frankfurter Strasse 145
61476 Kronberg im Taunus (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 3 November 2011 rejecting the opposition filed against European patent No. 1082080 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the decision of the opposition division by which the opposition against the European Patent No. 1 082 080 was rejected.
- II. The appellant requested that the decision be set aside and that the patent be revoked.
- III. In its reply to the appeal grounds the respondent (patent proprietor) requested to maintain the patent as granted or to maintain the patent according to one of the six auxiliary requests submitted therewith.
- IV. The parties were summoned to oral proceedings before the Board. In a communication sent in preparation for the oral proceedings, the Board informed the parties of its preliminary opinion on the case.
- V. By the letter dated 17 May 2016 the respondent submitted that the text on the basis of which the patent was granted was no longer approved, that all requests were withdrawn and requested furthermore that the patent be revoked.
- VI. The oral proceedings were cancelled.

Reasons for the Decision

1. Pursuant to Article 105a(2) EPC a request for revocation of the patent by the proprietor may not be filed while opposition proceedings are pending. Therefore the corresponding request of the respondent patent proprietor submitted with its letter of

17 May 2016 can not be allowed.

2. On the other hand and according to Article 113(2) EPC the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

This principle has to be strictly observed also in opposition and opposition appeal proceedings.

3. The respondent has withdrawn its approval to the text of the patent as granted and all auxiliary requests submitted with its reply to the appeal grounds, so there is no text of the patent on which basis an examination or a decision upon maintenance of the patent could be taken. Under these circumstances and in accordance with the case law of the Boards of appeal the only option available to the Board is to revoke the patent according to Article 101 EPC (see for example T 2405/12 and decisions cited therein).

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. H. A. Patin

M. Harrison

Decision electronically authenticated