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**Datasheet for the decision
of 1 December 2015**

Case Number: T 1960/12 - 3.2.06

Application Number: 03002678.5

Publication Number: 1447067

IPC: A61F13/15, A61F13/536,
A61F13/539

Language of the proceedings: EN

Title of invention:

Thin and dry diaper

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponent:

SCA Hygiene Products AB

Headword:

Relevant legal provisions:

EPC 1973 Art. 113(2)
EPC Art. 101, 105a(2)
EPC R. 84

Keyword:

Withdrawal of approval of any text for maintenance of the
patent

Decisions cited:

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1526/06

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1960/12 - 3.2.06

**D E C I S I O N
of Technical Board of Appeal 3.2.06
of 1 December 2015**

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

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

Representative: Anderson, James Edward George
Elkington and Fife LLP
Prospect House
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Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 July 2012 concerning maintenance of the
European Patent No. 1447067 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
E. Kossonakou

Summary of Facts and Submissions

- I. In its interlocutory decision dated 28 June 2012 the opposition division found that European patent No. 1 447 067 in an amended form met the requirements of the EPC.
- II. An appeal against this interlocutory decision was filed by the appellant (opponent), requesting that the decision be set aside and the patent be revoked.
- III. In its reply of 2 April 2013, the respondent (patent proprietor) requested, as a main request that the appeal be dismissed or in the alternative that the patent should be maintained in an amended form according to one of the auxiliary requests 1 to 3 filed with its reply.
- IV. In preparation for oral proceedings, the Board issued a communication expressing its provisional view on inventive step.
- V. Oral proceedings before the Board of Appeal were held on 1 December 2015, during which the respondent indicated that all its requests were withdrawn and that it withdrew its approval of any text for maintenance of the patent.

Reasons for the Decision

1. Under Article 113(2) EPC 1973, the European Patent Office shall consider and 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.

2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. The respondent, during the oral proceedings before the Board of Appeal, withdrew its approval of any text for maintenance of the patent. There is therefore no text of the patent on the basis of which the Board can consider the appeal. It is moreover clear that the respondent wishes to prevent any text whatsoever of the patent from being maintained.

However, the patent proprietor cannot have the proceedings terminated by stating that it is surrendering the European patent; surrender of a patent is mentioned in Rule 84 EPC as a possibility in national proceedings but is not provided for in the Convention for the procedure before the EPO. Also revocation at the request of the patent proprietor in the framework of opposition or opposition appeal proceedings is not possible, as it is expressly excluded by Article 105a(2) EPC. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. The only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.

3. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal in *inter alia* T 73/84, T 186/84, T 237/86, T 459/88, T 655/01 and T 1526/06.

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