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**Datasheet for the decision
of 11 May 2016**

Case Number: T 2405/12 - 3.2.06

Application Number: 97949545.4

Publication Number: 0952800

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

HETEROGENEOUS SURGE MATERIAL FOR ABSORBENT ARTICLES

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:

SCA Hygiene Products AB
The Procter & Gamble Company

Headword:

Relevant legal provisions:

EPC 1973 Art. 113(2)
EPC Art. 101

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, T 1960/12

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 2405/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 11 May 2016

Appellant: SCA Hygiene Products AB
(Opponent 1) 405 03 Göteborg (SE)

Representative: Hammond, Andrew David
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Box 1098
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Appellant: KIMBERLY-CLARK WORLDWIDE, INC.
(Patent Proprietor) 401 North Lake Street
Neenah, WI 54956 (US)

Representative: Davies, Christopher Robert
Dehns
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London EC4Y 8JD (GB)

Party as of right: The Procter & Gamble Company
(Opponent 2) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Heide, Ute
Procter & Gamble Service GmbH
IP Department
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 September 2012 concerning maintenance of the
European Patent No. 0952800 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
 M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. In its interlocutory decision dated 26 September 2012 the opposition division found that European patent No. 0 952 800 in an amended form met the requirements of the EPC.
- II. An appeal against this interlocutory decision was filed by the appellant (opponent I) requesting that the decision be set aside and the patent be revoked. An appeal was also filed by the appellant (patent proprietor).
- III. The Board issued a summons to oral proceedings followed by a communication in which the Board indicated its provisional opinion, stating *inter alia* that the ground for opposition under Article 100(b) EPC seemingly prejudiced the maintenance of the patent.
- IV. With letter dated 4 May 2016, the appellant/opponent filed further submissions in support of its request for revocation. By letter of the same date, the appellant/patent proprietor withdrew its appeal, stating that it disapproved the granted text of the patent in any form and furthermore requesting revocation of the patent.
- V. The oral proceedings were subsequently cancelled.

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. The appellant/patent proprietor, in addition to withdrawing its appeal, by disapproving the granted text of the patent in any form has thereby withdrawn its approval of any text for maintenance of the patent. 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. There is therefore no text of the patent on the basis of which the Board can consider the appeal of appellant/opponent I.
3. However, the patent proprietor cannot have the proceedings terminated by stating that it is surrendering the European patent, since this 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 in Article 101 EPC.
4. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with established 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, T 1526/06 and T1960/12.

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