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**Datasheet for the decision
of 18 April 2017**

Case Number: T 0744/13 - 3.2.06

Application Number: 03002677.7

Publication Number: 1447066

IPC: A61F13/532, A61F13/535,
A61F13/539, A61F13/534,
A61F13/15

Language of the proceedings: EN

Title of invention:
Comfortable diaper

Patent Proprietor:
THE PROCTER & GAMBLE COMPANY

Opponents:
SCA Hygiene Products AB
KIMBERLY-CLARK WORLDWIDE, INC.

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, T 1960/12

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0744/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 18 April 2017

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

Representative: Valea AB
Box 1098
405 23 Göteborg (SE)

Appellant: KIMBERLY-CLARK WORLDWIDE, INC.
(Opponent 2) 401 North Lake Street
Neenah WI 54956 (US)

Representative: Davies, Christopher Robert
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: Anderson, James Edward George
Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
23 January 2013 concerning maintenance of the
European Patent No. 1447066 in amended form.

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	W. Ungler

Summary of Facts and Submissions

- I. In its interlocutory decision dated 23 January 2013 the opposition division found that European patent No. 1 447 066 in an amended form met the requirements of the EPC.
- II. Appeals against this interlocutory decision were filed by the appellant (opponent I) and the appellant (opponent II), each requesting that the decision be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeals be dismissed, in the alternative that the patent be maintained according to one of auxiliary requests 1 to 7.
- IV. With letter of 3 March 2017 the respondent wrote:
"On behalf of the Proprietor, we hereby withdraw all of our requests and our approval of the text on which basis the patent has been granted, with the intention that the patent shall be immediately revoked. This withdrawal is conditional on the patent being revoked without a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal being issued."

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. With letter of 3 March 2017 the respondent withdrew its approval of any text for maintenance of the patent provided that no communication was issued by the Board. With no such communication having been issued, the condition for the respondent's withdrawal of its approval of any text for maintenance of the patent is met.
3. 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. With the respondent's withdrawal of approval of any text for maintenance of the patent, there is 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.
4. 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.
5. 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, 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