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Datasheet for the decision of 14 November 2017

Case Number: T 1520/13 - 3.2.06

Application Number: 04751982.2

Publication Number: 1622557

IPC: A61F13/20

Language of the proceedings: EN

Title of invention:
A PROCESS FOR PRODUCING STABILIZED TAMPONS

Patent Proprietor:
THE PROCTER & GAMBLE COMPANY

Opponent:
Johnson & Johnson GmbH

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:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1520/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 November 2017

Appellant: (Opponent)	Johnson & Johnson GmbH Johnson & Johnson Platz 2 41470 Neuss (DE)
Representative:	Metten, Karl-Heinz Boehmert & Boehmert Anwaltspartnerschaft mbB Pettenkoferstrasse 22 80336 München (DE)
Respondent: (Patent Proprietor)	THE PROCTER & GAMBLE COMPANY One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	O'Callaghan, Robert James Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 16 April 2013 rejecting the opposition filed against European patent No. 1622557 pursuant to Article 101(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. In its decision dated 16 April 2013 the opposition division rejected the opposition to European patent No. 1 622 557.

II. An appeal against this decision was filed by the appellant (opponent) requesting that the decision be set aside and the patent be revoked.

III. In its letter of response, the respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 5.

IV. In preparation for oral proceedings the Board issued a communication containing *inter alia* its provisional view on issues under Article 100(c) EPC and Article 123(2) EPC in the various requests.

V. Further auxiliary requests were filed by the respondent with its submission of 16 October 2017.

VI. Oral proceedings before the Board were held on 14 November 2017, during which the respondent stated unequivocally 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* decisions 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:

N. Schneider M. Harrison

Decision electronically authenticated