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**Datasheet for the decision
of 3 July 2017**

Case Number: T 1535/13 - 3.2.06

Application Number: 02794326.5

Publication Number: 1455715

IPC: A61F13/84, D04H1/42, D04H1/54,
D01F1/10, A61F13/532,
A61F13/534, A61F13/535,
A61F13/533, A61F13/15,
A61F13/536, A61F13/53

Language of the proceedings: EN

Title of invention:

ABSORBENT ARTICLE WITH STABILIZED ABSORBENT STRUCTURE HAVING
NON-UNIFORM LATERAL COMPRESSION STIFFNESS

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:

SCA Hygiene Products AB
Paul Hartmann AG
The Procter & Gamble Company

Headword:

Relevant legal provisions:

EPC Art. 101, 105a(2)

EPC 1973 Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Examination of the opposition - revocation of the patent at
request of the patent proprietor

Decisions cited:

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

T 1526/06, T 1960/12

Catchword:



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Case Number: T 1535/13 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 July 2017

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

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Appellant: Paul Hartmann AG
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Representative: DREISS Patentanwälte PartG mbB
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Appellant: The Procter & Gamble Company
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Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
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Representative: Davies, Christopher Robert
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 May 2013 concerning maintenance of the
European Patent No. 1455715 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
W. Ungler

Summary of Facts and Submissions

- I. In its interlocutory decision dated 6 May 2013 the opposition division found that European patent No. 1 455 715 in an amended form met the requirements of the EPC.
- II. Appeals against this decision were filed by the the appellant (opponent I), the appellant (opponent II) and the appellant (opponent III), each requesting revocation of the patent.
- III. The respondent (patent proprietor) requested dismissal of the appeals.
- IV. With its communication annexed to a summons to oral proceedings, the Board indicated its preliminary opinion on the case.
- V. With letter of 7 June 2017, the respondent withdrew all its requests and also withdrew its approval of the text of the patent in any form. It further requested revocation of the patent.
- VI. 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 respondent (patent proprietor), by withdrawing approval of the 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 maintain the patent.

3. 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, as also requested by each of the appellants.

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 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