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**Datasheet for the decision
of 8 March 2018**

Case Number: T 1421/14 - 3.2.06

Application Number: 06774694.1

Publication Number: 1912603

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

FLEXIBLE ABSORBENT ARTICLE WITH IMPROVED BODY FIT

Patent Proprietor:

The Procter & Gamble Company

Opponent:

Kimberly-Clark Worldwide, Inc.

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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



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Chambres de recours

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Case Number: T 1421/14 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 8 March 2018

Appellant: Kimberly-Clark Worldwide, Inc.
(Opponent) 401 North Lake Street
Neenah, Wisconsin 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: 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 30 April 2014
rejecting the opposition filed against European
patent No. 1912603 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: G. de Crignis
W. Ungler

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division, in which it rejected the opposition against European patent No. 1 912 603.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. In its reply the respondent (patent proprietor) requested that the decision be upheld (i.e. dismissal of the appeal). It also filed first to ninth auxiliary requests. Auxiliarily oral proceedings were requested.
- IV. In a further submission, the appellant supplied observations on certain of the auxiliary requests.
- V. The Board issued a summons to oral proceedings and subsequently a communication setting out its preliminary opinion.
- VI. In its letter dated 19 February 2018, the respondent (proprietor) withdrew all its requests as well as its approval of the text of the patent as granted. It further stated that it understood the patent would therefore be revoked and withdrew its request for oral proceedings.
- VII. The oral proceedings were duly cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the EPO shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
2. Such an agreement cannot be deemed to exist if the proprietor - as in the present case - expressly states that it no longer approves the text of the patent as granted and withdraws all pending requests.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see e.g. Case Law of the Board of Appeal of the European Patent Office, 8th Edition, 2016, IV. C.5.2).

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:



L. Stridde

M. Harrison

Decision electronically authenticated