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**Datasheet for the decision
of 14 June 2018**

Case Number: T 0010/15 - 3.2.06

Application Number: 08719678.8

Publication Number: 2144583

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

ARRAY OF GENDER-SPECIFIC, DISPOSABLE, ADULT-INCONTINENCE
ARTICLES

Patent Proprietor:

KIMBERLY-CLARK WORLDWIDE, INC.

Opponent:

Paul Hartmann AG

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0010/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 June 2018

Appellant: Paul Hartmann AG
(Opponent) Paul-Hartmann-Straße 12
89522 Heidenheim (DE)

Representative: DREISS Patentanwälte PartG mbB
Postfach 10 37 62
70032 Stuttgart (DE)

Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
(Patent Proprietor) 2300 Winchester Road
Neenah, WI 54956 (US)

Representative: Dehns
St. Brides House
10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 November 2014 concerning maintenance of the
European Patent No. 2144583 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: G. de Crignis
E. Kossonakou

Summary of Facts and Submissions

- I. In its interlocutory decision, the opposition division found that European Patent No. 2 144 583 as amended met the requirements of the European Patent Convention (EPC).
- II. The appellant (opponent) filed an appeal against this decision. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. In reply, the respondent (patent proprietor) requested that the appeal be dismissed. It additionally submitted first to third auxiliary requests.
- IV. The Board issued a summons to oral proceedings and subsequently a communication in which it indicated its preliminary opinion.
- V. With letter dated 7 June 2018 the respondent withdrew all pending requests as well as its approval of the granted text in any form, and requested that the patent be revoked.
- VI. The oral proceedings were cancelled.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC the European Patent Office 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. This principle has to be strictly observed also in opposition and opposition-appeal proceedings.

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. In such circumstances there is no text of the patent on the basis of which the Board can consider the appeal. Therefore, 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:



M. H. A. Patin

M. Harrison

Decision electronically authenticated