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**Datasheet for the decision  
of 31 January 2019**

**Case Number:** T 0170/15 - 3.2.06

**Application Number:** 01996017.8

**Publication Number:** 1357877

**IPC:** A61F13/472, B65D75/20,  
B65D33/20, A61F13/551,  
A61F15/00, B65D75/58, A61F13/84

**Language of the proceedings:** EN

**Title of invention:**  
PACKAGE FOR ABSORBENT ARTICLES

**Patent Proprietor:**  
KIMBERLY-CLARK WORLDWIDE, INC.

**Opponents:**  
Essity Hygiene and Health Aktiebolag  
THE PROCTER & GAMBLE COMPANY

**Headword:**

**Relevant legal provisions:**  
EPC Art. 101, 105a(2), 113(2)

**Keyword:**

**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 0170/15 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 31 January 2019**

**Appellant:** Essity Hygiene and Health Aktiebolag  
(Opponent 1) 405 03 Göteborg (SE)

**Representative:** Engstrand, Maria Linnéa  
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**Appellant:** THE PROCTER & GAMBLE COMPANY  
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Cincinnati, Ohio 45202 (US)

**Representative:** Russell, Tim  
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**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
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**Representative:** Dehns  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
26 November 2014 concerning maintenance of the  
European Patent No. 1357877 in amended form.**

**Composition of the Board:**

<b>Chairman</b>	M. Harrison
<b>Members:</b>	M. Hannam
	E. Kossonakou

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 26 November 2014 the opposition division found that the patent according to the main request met the requirements of the EPC.
- II. Appeals against this decision were filed by each of the appellants (opponent I and opponent II) 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 4.
- IV. In preparation for oral proceedings the Board issued a communication containing *inter alia* its provisional view on issues under Article 123(2) EPC in the various requests.
- V. With letter of 4 January 2019, the respondent withdrew all its requests and withdrew its approval of any text for maintenance of the patent in any form.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, 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. With its letter of 4 January 2019, the respondent 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.
  
3. However, the patent proprietor cannot have the proceedings terminated by stating that it is surrendering the European patent as there is no provision for this in the EPC. 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.
  
4. 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 European patent is revoked.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated