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**Datasheet for the decision
of 7 March 2019**

Case Number: T 0522/15 - 3.2.06

Application Number: 02776295.4

Publication Number: 1455706

IPC: A61F13/15

Language of the proceedings: EN

Title of invention:

METHOD FOR MAKING AN ABSORBENT ARTICLE WITH PRINTED ELASTOMERS

Patent Proprietor:

KIMBERLY-CLARK CORPORATION

Opponents:

The Procter & Gamble Company
Essity Hygiene and Health Aktiebolag

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:



Beschwerdekammern
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Case Number: T 0522/15 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 March 2019

Appellant: The Procter & Gamble Company
(Opponent 1) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Mather, Peter Geoffrey
NV Procter & Gamble Services Company SA
100 Temselaan
1853 Strombeek-Bever (BE)

Respondent: KIMBERLY-CLARK CORPORATION
(Patent Proprietor) 401 North Lake Street
Neenah
Wisconsin 54957-0349 (US)

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

Party as of right: Essity Hygiene and Health Aktiebolag
(Opponent 2) 405 03 Göteborg (SE)

Representative: Valea AB
Box 1098
405 23 Göteborg (SE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 January 2015 concerning maintenance of the
European Patent No. 1455706 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	C. Brandt

Summary of Facts and Submissions

- I. In its interlocutory decision dated 14 January 2015 the opposition division found that European patent No. 1 455 706 according to a main request met the requirements of the EPC.
- II. An appeal against this decision was filed by the appellant (opponent I) 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 either auxiliary request 1 or 2.
- IV. In preparation for oral proceedings the Board issued a communication containing *inter alia* its provisional opinion that the subject-matter of claim 1 of the main request appeared not to involve an inventive step (Article 56 EPC) and that the subject-matter of claim 1 of each of the auxiliary requests seemingly contravened Article 123(2) EPC.
- V. With letter of 4 March 2019 the respondent indicated that it withdrew all its requests in relation to the patent in suit and withdrew approval of the granted text in any form. As a consequence it requested that the patent be revoked.

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, with its letter of 4 March 2019, 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. It is noted that revocation of the patent 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