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**Datasheet for the decision  
of 18 August 2019**

**Case Number:** T 1084/16 - 3.3.06

**Application Number:** 04753717.0

**Publication Number:** 1691771

**IPC:** A61K8/18, A61K8/88, A61Q19/10,  
A61K8/81, A61K8/73, A61K8/02,  
A61K8/72

**Language of the proceedings:** EN

**Title of invention:**  
Tissue products comprising a cleansing composition

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

**Opponent:**  
Essity Hygiene and Health Aktiebolag

**Headword:**

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor

**Decisions cited:**

T 0073/84, T 0186/84

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1084/16 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 18 August 2019**

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

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
(Patent Proprietor) 401 North Lake Street  
Neenah, WI 54956 (US)

**Representative:** Dehns  
St. Bride's House  
10 Salisbury Square  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 8 March 2016  
rejecting the opposition filed against European  
patent No. 1691771 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** J.-M. Schwaller  
**Members:** P. Ammendola  
J. Hoppe

## **Summary of Facts and Submissions**

- I. The appeal by the opponent (appellant) lies against the decision of the opposition division rejecting the opposition filed against European patent No. 1 691 771.
- II. In its notice of appeal the appellant requested that the decision of the opposition division be set aside and that the patent be revoked in its entirety.
- III. In its reply the patent proprietor (respondent) requested to dismiss the appeal and to maintain the patent as granted. Furthermore in its reply and in the following letter the respondent filed several auxiliary requests.
- IV. The parties were summoned to oral proceedings and the Board issued a communication including its preliminary opinion.
- V. With a letter dated 2 August 2019 the respondent stated:  
  
*"The Patentee hereby withdraws their approval of the text in which the above patent was granted. For the avoidance of doubt, it is confirmed that the Patentee wishes to abandon the above patent."*
- VI. Following that letter the oral proceedings were cancelled.

### **Reasons for the Decision**

1. Under the provisions of Article 113(2) EPC, the EPO shall decide upon the European patent only in the text submitted to it or agreed by the proprietor of the patent.
2. In the present case the patent proprietor unambiguously indicated in its letter dated 2 August 2019 that it withdrew its approval of the text in which the patent had been granted. With the further explanation that it wished to abandon the patent, it further expressed implicitly its disapproval of any amended version of the text. Therefore, agreement by the patent proprietor pursuant to Article 113(2) EPC cannot be held to be given.
3. Under such circumstances, a substantive requirement for maintaining the patent is lacking. Thus the decision of the opposition division which rejected the opposition, thereby maintaining the patent as granted, is to be set aside and the proceedings are to be terminated by a decision ordering revocation of the patent, without going into the substantive issues (see e.g. decisions T 73/84, OJ EPO 1985, 241 and T 186/84, OJ EPO 1986, 79).

**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:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated