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**Datasheet for the decision  
of 8 August 2019**

**Case Number:** T 1785/16 - 3.2.05

**Application Number:** 08719714.1

**Publication Number:** 2146917

**IPC:** B65H29/60, B65H29/62, A61F13/15

**Language of the proceedings:** EN

**Title of invention:**  
Method for selective folding or redirecting of cut web products

**Patent Proprietor:**  
The Procter & Gamble Company

**Opponent:**  
Kimberly-Clark Worldwide, Inc.

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

**Keyword:**  
Withdrawal of the approval of the text of the patent as granted

**Decisions cited:**

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,  
T 1526/06, T 1960/12, T 0522/15



**Beschwerdekammern**  
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Case Number: T 1785/16 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 8 August 2019**

**Appellant:** Kimberly-Clark Worldwide, Inc.  
(Opponent) 2300 Winchester Road  
Neenah WI 54956 (US)

**Representative:** 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:** P&G Patent Germany  
Procter & Gamble Service GmbH  
Sulzbacher Straße 40  
65824 Schwalbach am Taunus (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 18 May 2016  
rejecting the opposition filed against European  
patent No. 2146917 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** M. Poock  
**Members:** C. Brandt  
T. Vermeulen

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 18 May 2016 the opposition division found that European patent No. 2 146 917 met the requirements of the EPC.
- II. An appeal against this decision was filed on 22 July 2016 by the opponent (appellant) requesting that the decision be set aside and the patent be revoked.
- III. In its letter of response dated 20 January 2017, the patent proprietor (respondent) requested that the appeal be dismissed and that the patent be maintained as granted.
- IV. With letter of 4 July 2019 the respondent indicated that it withdrew approval of the text of the patent granted and did not submit any amended text.

## **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. The 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 July 2019, withdrew its approval of any text for a 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 concluded 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, T 1960/12 and T 522/15.

## 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. Patin

M. Poock

Decision electronically authenticated