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**Datasheet for the decision  
of 2 November 2020**

**Case Number:** T 1833/16 - 3.2.06

**Application Number:** 07805137.2

**Publication Number:** 2056769

**IPC:** A61F13/42, A61F13/84

**Language of the proceedings:** EN

**Title of invention:**

ABSORBENT ARTICLES INCLUDING A MONITORING SYSTEM POWERED BY  
AMBIENT ENERGY

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

Essity Hygiene and Health Aktiebolag

**Headword:**

**Relevant legal provisions:**

EPC Art. 101, 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,  
T 1526/06, T 1960/12, T 1832/16

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 1833/16 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 2 November 2020**

**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:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
1 June 2016 concerning maintenance of the  
European Patent No. 2056769 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** P. Cipriano  
E. Kossonakou

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 1 June 2016 the opposition division found that European patent No. 2 056 769 in an amended form met the requirements of the EPC.
- II. An appeal against this decision was filed by the appellant (opponent) requesting that the decision under appeal 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 on the basis of a single auxiliary request.
- IV. In preparation for oral proceedings, the Board issued a communication containing *inter alia* its provisional view on objections under Articles 56, 84 and 123(2) EPC in respect of both requests.
- V. With letter dated 28 October 2020, the respondent withdrew all its requests, withdrew its approval of the granted text in any form and requested that the patent be revoked.
- VI. The oral proceedings were subsequently cancelled.

## **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 dated 28 October 2020, 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.
3. By explicitly requesting revocation of the patent the respondent made its intention to prevent any text whatsoever of the patent from being maintained unequivocal, although 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.
4. In these circumstances, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. As there is no provision in the EPC allowing the patent proprietor to surrender the patent and bring the proceedings to an end, the only possibility in such a case is for the Board to revoke the patent for other reasons, as envisaged in Article 101 EPC.
5. It follows, also in line with the 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 1832/16, that the patent must be revoked.

**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