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**Datasheet for the decision
of 21 October 2021**

Case Number: T 0311/17 - 3.2.06

Application Number: 06112400.4

Publication Number: 1842513

IPC: A61F13/15, A61F13/472,
A61F13/475, A61F13/537

Language of the proceedings: EN

Title of invention:

Absorbent article having nonwoven lateral zones

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Kimberly-Clark Worldwide, Inc.
Ontex BV

Headword:

Relevant legal provisions:

EPC Art. 101, 105a(2), 113(2)

Keyword:

Withdrawal of approval of any text for maintenance of the patent

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

Boards of Appeal

Chambres de recours

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Case Number: T 0311/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 21 October 2021

Appellant: The Procter & Gamble Company
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Elkington and Fife LLP
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Sevenoaks, Kent TN13 1XR (GB)

Appellant: Kimberly-Clark Worldwide, Inc.
(Opponent 1) 2300 Winchester Road
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Representative: Dehns
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London EC4Y 8JD (GB)

Appellant: Ontex BV
(Opponent 2) Genthof 5
9255 Buggenhout (BE)

Representative: Abthorpe, Mark
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 December 2016 concerning maintenance of the
European Patent No. 1842513 in amended form.**

Composition of the Board:

Chairman	M. Harrison
Members:	M. Hannam
	J. Hoppe

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by each of the opponents and the patent proprietor against the interlocutory decision of the opposition division, in which it found that the patent in an amended form met the requirements of the EPC.
- II. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion on the objections to the requests on file.
- III. At the start of the oral proceedings before the Board, held by videoconference on 21 October 2021, the appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or, as an auxiliary measure, that the patent be maintained in amended form based on the "main request-alternative", filed with letter dated 9 September 2020, or that the patent be maintained in amended form based on: auxiliary request 1, auxiliary request 1 - alternative, auxiliary request 2 (i.e. dismiss the opponents' appeals), auxiliary request 2 - alternative, auxiliary request 3, auxiliary request 3 - alternative, auxiliary request 4, auxiliary request 4 - alternative, auxiliary request 5, auxiliary request 5 - alternative, auxiliary request 6, auxiliary request 6 - alternative, auxiliary request 7, auxiliary request 7 - alternative, auxiliary request 8, auxiliary request 8 - alternative, auxiliary request 9, auxiliary request 9 - alternative, in the given order.
- IV. The appellants (opponent OI and opponent OII) each requested that the decision under appeal be set aside

and the patent be revoked.

- V. At the end of the oral proceedings, the appellant (proprietor) withdrew its appeal and stated unequivocally that it withdrew all its requests on file and withdrew approval of any text for maintenance of the patent.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall examine, 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. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly states that it no longer approved any text for maintenance of the patent.
3. 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. It is moreover clear that it wishes to prevent any text whatsoever of the patent from being maintained.
4. In the interests of legal certainty, the proceedings ought to be terminated as quickly as possible. The only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.

5. 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 655/01, T 1526/06 and T 1960/12; cf. also T 237/86 and T 459/88.

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:



D. Grundner

M. Harrison

Decision electronically authenticated