

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 17 September 2019**

Case Number: T 0540/17 - 3.3.09

Application Number: 08763224.6

Publication Number: 2150574

IPC: C08J5/18

Language of the proceedings: EN

Title of invention:

ABSORBENT ARTICLES COMPRISING LOW BASIS WEIGHT FILMS

Patent Proprietor:

The Procter & Gamble Company

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Basis of decision - text or agreement to text withdrawn by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 2405/12

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0540/17 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 17 September 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: The Procter & Gamble Company
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Jump, Timothy John Simon
Venner Shipley LLP
200 Aldersgate
London EC1A 4HD (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 January 2017
rejecting the opposition filed against European
patent No. 2150574 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman W. Sieber
Members: F. Rinaldi
D. Rogers

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the decision of the opposition division to reject the opposition against European patent No. 2 150 574.
- II. The opponent (appellant) requested that the decision under appeal be set aside and the patent be revoked and that the appeal fee be reimbursed.
- III. The patent proprietor (respondent) requested that the appeal be dismissed (maintenance of the patent as granted) or that the patent be maintained on the basis of the auxiliary request before the opposition division.
- IV. The parties were summoned to oral proceedings. The board issued a communication setting out its preliminary and non-binding opinion.
- V. By letter dated 3 September 2019, the respondent stated that "the Proprietors no longer approve the text of the subject patent both in its current form and as amended by the single auxiliary request on file" and that the proprietors would not be attending the scheduled oral proceedings.
- VI. By letter dated 11 September 2019, the appellant stated that it no longer maintained the request for reimbursement of the appeal fee and that it would not be represented at the oral proceedings.
- VII. In view of the parties' latest submissions, the board cancelled the oral proceedings.

Reasons for the Decision

1. Article 113(2) EPC stipulates that 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.
2. Agreement cannot be deemed to be given if the proprietor, without submitting an amended text, expressly states that it no longer approves the text of the patent as granted or as amended.
3. Where there is no text of the patent on which basis the board can consider the appeal of the appellant/opponent, the only possibility available to the board is to revoke the patent as envisaged in Article 101 EPC. In this context, reference is made to the Case Law of the Boards of Appeal of the EPO, in particular to T 2405/12 and the decisions cited therein.

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:



L. Malécot-Grob

W. Sieber

Decision electronically authenticated