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**Datasheet for the decision
of 21 March 2024**

Case Number: T 0492/22 - 3.2.06

Application Number: 04788541.3

Publication Number: 1793783

IPC: A61F13/49, B32B1/00

Language of the proceedings: EN

Title of invention:

METHOD FOR PRODUCTION OF DISPOSABLE ABSORBENT ARTICLES

Patent Proprietor:

Essity Hygiene and Health Aktiebolag

Opponents:

The Procter & Gamble Company
Kimberly-Clark Worldwide, Inc.

Headword:

Relevant legal provisions:

EPC Art. 101, 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 1960/12

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0492/22 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 21 March 2024

Appellant: Kimberly-Clark Worldwide, Inc.
(Opponent 2) 2300 Winchester Road
Neenah WI 54956 (US)

Representative: Dehns
St. Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Respondent: Essity Hygiene and Health Aktiebolag
(Patent Proprietor) 405 03 Göteborg (SE)

Representative: Valea AB
Box 1098
405 23 Göteborg (SE)

Party as of right: The Procter & Gamble Company
(Opponent 1) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 December 2021 concerning maintenance of the
European Patent No. 1793783 in amended form.**

Composition of the Board:

Chairman P. Cipriano
Members: M. Hannam
 W. Ungler

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the opponent against the interlocutory decision of the opposition division, in which it found that the patent according to a main request met the requirements of the EPC.
- II. The appellant (opponent) requested 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 according to one of auxiliary requests 1 to 3.
- IV. The Board issued a communication containing its provisional opinion on the objections to the requests on file.
- V. With its submission of 11 March 2024, the respondent indicated that it no longer approved the text upon which the European Patent was granted and withdrew all its other requests.

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 approves the text on the basis of which the opposition division intended to maintain the patent and also withdraws all its requests on file.
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 in Article 101 EPC, but for other reasons (i.e. non-compliance with Article 113(2) 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 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

P. Cipriano

Decision electronically authenticated