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**Datasheet for the decision
of 18 June 2024**

Case Number: T 1164/22 - 3.2.06

Application Number: 12727752.3

Publication Number: 2717821

IPC: A61F13/534, A61F13/536,
A61F13/53, A61F13/533

Language of the proceedings: EN

Title of invention:
DISPOSABLE DIAPERS

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Kimberly-Clark Worldwide, Inc.

Headword:

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

Keyword:
No approval of text for maintenance of the patent

Decisions cited:

T 0073/84, T 0186/84, T 0655/01, T 1525/06, T 1960/12

Catchword:



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Chambres de recours

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Case Number: T 1164/22 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 18 June 2024

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: Elkington and Fife LLP
Prospect House
8 Pembroke Road
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 March 2022
rejecting the opposition filed against European
patent No. 2717821 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
L. Basterreix

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 to European patent No. 2 717 821.
- II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be dismissed or, alternatively, that the patent be maintained on the basis of one of auxiliary requests 1-15 filed with the reply to the statement setting out the grounds of appeal.
- IV. Oral proceedings were held before the Board on 18 June 2024, during which the respondent stated unequivocally that it no longer approved the text of the patent as granted, would not submit any new claim requests and withdrew all auxiliary 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(2) 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, T 655/01, T 1526/06 and T 1960/12.

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:



C. Spira

M. Harrison

Decision electronically authenticated