

Internal distribution code:

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

**Datasheet for the decision
of 14 May 2025**

Case Number: T 1575/23 - 3.2.06

Application Number: 17194255.0

Publication Number: 3284450

IPC: A61F13/532, A61F13/537

Language of the proceedings: EN

Title of invention:

ABSORBENT ARTICLE AND ABSORBENT CORE FORMING CHANNELS WHEN WET

Patent Proprietor:

The Procter & Gamble Company

Opponents:

Ontex BV
Essity Hygiene and Health Aktiebolag
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 0655/01, T 1526/06, T 1960/12

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

Case Number: T 1575/23 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 14 May 2025

Appellant: Essity Hygiene and Health Aktiebolag
(Opponent 2) Mölndals Bro 2
Mölndal
405 03 Göteborg (SE)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Appellant: Kimberly-Clark Worldwide, Inc.
(Opponent 3) 2300 Winchester Road
Neenah WI 54956 (US)

Representative: Dehns
10 Old Bailey
London EC4M 7NG (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
Sevenoaks, Kent TN13 1XR (GB)

Party as of right: Ontex BV
(Opponent 1) Genthof 5
9255 Buggenhout (BE)

Representative: Macchetta, Andrea
Ontex BV
Korte Keppestraat 21
9320 Erembodegem-Aalst (BE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 July 2023 concerning maintenance of the
European Patent No. 3284450 in amended form.

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
S. Ruhwinkel

Summary of Facts and Submissions

- I. This decision concerns the appeals filed by both opponent II and opponent III against the decision of the opposition division to reject the oppositions to European patent No. EP-B-3 284 450.
- II. The appellants each 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 9.
- IV. In preparation for oral proceedings, the Board issued a communication under Article 15(1) RPBA containing its provisional opinion that none of the requests on file were allowable.
- V. With its submission of 9 May 2025 the respondent unconditionally withdrew its main request, all of its auxiliary requests and its approval for the granted version of the patent, with the intention that the patent should be revoked.

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. 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. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. 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, 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:



D. Grundner

M. Harrison

Decision electronically authenticated