

**Internal distribution code:**

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

**Datasheet for the decision  
of 7 October 2025**

**Case Number:** T 1727/23 - 3.2.04

**Application Number:** 17764961.3

**Publication Number:** 3538046

**IPC:** A61F13/56, A61F13/551,  
A61F13/49

**Language of the proceedings:** EN

**Title of invention:**

ARRAY OF ABSORBENT ARTICLES WITH EAR PORTIONS

**Patent Proprietor:**

The Procter & Gamble Company

**Opponent:**

Maiwald GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 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Basis of decision - text or agreement to text withdrawn by  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

**Case Number: T 1727/23 - 3.2.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 7 October 2025**

**Appellant:**

(Opponent)

Maiwald GmbH  
Elisenhof, Elisenstrasse 3  
80335 München (DE)

**Representative:**

Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Respondent:**

(Patent Proprietor)

The Procter & Gamble Company  
One Procter & Gamble Plaza  
Cincinnati, OH 45202 (US)

**Representative:**

Elkington and Fife LLP  
Prospect House  
8 Pembroke Road  
Sevenoaks, Kent TN13 1XR (GB)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 July 2023 concerning maintenance of the  
European Patent No. 3538046 in amended form.**

**Composition of the Board:**

**Chairman**

M. Hannam

**Members:**

P. Cipriano

J. Hoppe

## **Summary of Facts and Submissions**

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 3 538 046 in an amended form met the requirements of the EPC.
- II. The appellant requested in its statement of grounds of appeal that the decision under appeal be set aside and the patent be revoked.
- III. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed or that the patent be maintained according to one of the auxiliary requests 1, 2, 2a, 3, 3a, 4, 5, 6 or 7 filed with the reply to the statement of grounds of appeal.
- IV. The parties were summoned to oral proceedings before the Board of Appeal. With a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) the parties were informed of the Board's provisional opinion.
- V. Oral proceedings were held on 7 October 2025.

At the end of the oral proceedings, the respondent withdrew all of its requests on file as well as its approval of any text for maintenance of the patent.

The appellant requested that the decision under appeal be set aside and the European patent be revoked.

## **Reasons for the Decision**

1. According to Article 113(2) EPC the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The respondent has withdrawn its approval to the text of the patent as granted and to all auxiliary requests submitted during the appeal procedure. There is thus no text of the patent upon which maintenance of the patent could be based.

Under these circumstances and in accordance with the case law of the boards of appeal the only option available to the Board is to revoke the patent according to Article 101 EPC (see for example T 2405/12 and 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:



G. Magouliotis

M. Hannam

Decision electronically authenticated