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D E C I S I O N
of 25 February 2002

Case Number: T 0474/99 - 3.2.6

Application Number: 91116069.5

Publication Number: 0477802

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:
Hygienic absorbent article

Patentee:
KIMBERLY-CLARK CORPORATION

Opponents:
SCA MOLNLYCKE AB
The Procter & Gamble Company

Headword:
-

Relevant legal provisions:
EPC Art. 102(3)(a), 113(2)

Keyword:
"Proprietor's request for revocation of the patent"

Decisions cited:
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Catchword:
-



Case Number: T 0474/99 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 25 February 2002

Appellant:
(Opponent I)

SCA MOLNYCKE AB
S-405 03 Goteborg (SE)

Representative:

Hammond, Andrew David
Göteborgs Patentbyrå Dahls AB
Sjöporten 4
S-417 64 Göteborg (SE)

Respondent:
(Proprietor of the patent)

KIMBERLY-CLARK WORLDWIDE, INC.
401 North Lake Street
Neenah
Wisconsin 54956 0349 (US)

Representative:

Davies, Christopher Robert
Frank B. Dehn & Co.
European Patent Attorneys
179 Queen Victoria Street
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Other party:
(Opponent II)

The Procter & Gamble Company
One Procter & Gamble Plaza
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Representative:

Boon, Graham Anthony
Elkington and Fife
Prospect House
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Decision under appeal:

**Interlocutory decision of the Opposition Division
of the European Patent Office posted 2 March 1999
concerning maintenance of European patent
No. 0 477 802 in amended form.**

Composition of the Board:

Chairman: P. Alting van Geusau
Members: H. Meinders
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. With its interlocutory decision posted on 2 March 1999 the Opposition Division maintained European patent No. 0 477 802 in amended form.
- II. Both Opponent I and the Proprietor appealed against this decision.
- III. By letter dated 12 February 2002 the Proprietor withdrew its appeal as well as its approval of the text in the form in which the patent was upheld by the Opposition Division. In addition revocation of the patent was requested.

Reasons for the Decision

1. The Opponent's appeal is admissible.
2. If the proprietor of a European patent states in opposition or appeal proceedings that he no longer approves the text in which the patent was granted and is not submitting an amended text, the patent is to be revoked (see T 0073/84, OJ EPO 1985, 241).

A request of the patent proprietor for revocation of the patent is in substance the same as stating disapproval of a given text of the claims and is to be regarded as a withdrawal of agreement to that text (see T 0186/84, OJ EPO 1986, 79).

The present European patent has, therefore, to be revoked (Article 102(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 0 477 802 is revoked.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau