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D E C I S I O N
of 17 September 2004

Case Number: T 0275/02 - 3.2.6

Application Number: 93116645.8

Publication Number: 0587196

IPC: A61F 13/15

Language of the proceedings: EN

Title of invention:
Disposable absorbent garment

Patentee:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:
SCA Hygiene Products AB
The Procter & Gamble Company

Headword:

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Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Revocation at the instigation of the patent proprietor"

Decisions cited:
T 0073/84 (OJ EPO 1984, 241)

Catchword:

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Case Number: T 0275/02 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 17 September 2004

Appellant: The Procter & Gamble Company
(Opponent 02) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Lawrence, Peter Robin Broughton
GILL JENNINGS & EVERY
Broadgate House
7 Eldon Street
London EC2M 7LH (GB)

Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
(Proprietor of the patent) 401 North Lake Street
Neenah, Wisconsin 54956 (US)

Representative: Jackson, Robert Patrick
Frank B. Dehn & Co.,
European Patent Attorneys
179 Queen Victoria Street
London EC4V 4EL (GB)

Other Party: SCA Hygiene Products AB
(Opponent 01) S-405 03 Göteborg (SE)

Representative: Hyltner, Jan-Olof
Albihns Stockholm AB
Box 5581
S-114 85 Stockholm (SE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
18 January 2002 concerning maintenance of
European patent No. 0587196 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. L. De Crignis
J. H. Van Moer

Summary of Facts and Submissions

- I. An interlocutory decision of the opposition division concerning maintenance of the European patent No. 0 587 196 in amended form was posted on 18 January 2002.
- II. The appellant (opponent 02) appealed against this decision by a letter filed on 14 March 2002, paid the fee for appeal on the same day and filed a Statement of Grounds of Appeal on 22 May 2002. It requested that the patent be revoked.
- III. In a letter filed on 18 August 2004, the respondent (patentee) withdrew the consent to the text of the patent in the form in which it was upheld by the opposition division, or in any other form, and requested revocation of the patent.

Reasons for the Decision

1. The appeal is admissible.
2. It follows from Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's request for revocation of its patent, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. European patent No. 0 587 196 is revoked.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau