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**Datasheet for the decision  
of 22 June 2018**

**Case Number:** T 1898/14 - 3.2.06

**Application Number:** 02733818.5

**Publication Number:** 1390572

**IPC:** A61F13/15, D04H5/06,  
A61F13/535, A61F13/534

**Language of the proceedings:** EN

**Title of invention:**

ABSORBENT ARTICLE HAVING A MULTILAYER BLENDED CORE AND A  
METHOD OF FORMING

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

Essity Hygiene and Health Aktiebolag

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2), 105a(2), 101

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor - revocation of the patent at request of the  
patent proprietor

**Decisions cited:**

T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,  
T 1526/06, T 1960/12, T 1535/13

**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  
Fax +49 (0)89 2399-4465

Case Number: T 1898/14 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 22 June 2018**

**Appellant:** Essity Hygiene and Health Aktiebolag  
(Opponent) 405 03 Göteborg (SE)

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

**Respondent:** KIMBERLY-CLARK WORLDWIDE, INC.  
(Patent Proprietor) 401 North Lake Street  
Neenah, WI 54956 (US)

**Representative:** Dehns  
St. Brides House  
10 Salisbury Square  
London EC4Y 8JD (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**9 July 2014 concerning maintenance of the**  
**European Patent No. 1390572 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** P. Cipriano  
W. Ungler

### **Summary of Facts and Submissions**

- I. By way of its interlocutory decision, the opposition division held that European Patent No. 1 390 572 as amended met the requirements of the European Patent Convention (EPC).
- II. The appellant (opponent) filed an appeal against this decision requesting revocation of the patent.
- III. The respondent (patent proprietor) requested dismissal of the appeal as a main request and submitted auxiliary requests 1 to 3.
- IV. In a communication annexed to a summons to oral proceedings, the Board expressed its provisional opinion on the requests before it.
- V. With letter of 23 May 2018, the respondent withdrew its approval of the text of the patent in any form and further requested revocation of the patent.
- VI. The oral proceedings were subsequently cancelled.

### **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall consider 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. The respondent, by withdrawing approval of the text of the patent in any form, has thereby withdrawn its approval of any text for maintenance of the patent.

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. There is therefore no text of the patent, on the basis of which the Board can maintain the patent.

3. 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, as also requested by the appellant.
  
4. In view of the above, the Board concludes that the patent must be revoked. This conclusion is also in line with established case law in *inter alia* T 73/84, T 186/84, T 237/86, T 459/88, T 655/01, T 1526/06, T 1960/12 and T 1535/13.

## **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:



M. H. A. Patin

M. Harrison

Decision electronically authenticated