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**Datasheet for the decision  
of 11 March 2021**

**Case Number:** T 1090/16 - 3.2.06

**Application Number:** 08779461.6

**Publication Number:** 2309966

**IPC:** A61F13/494, A61F13/49,  
A61F13/493, A61F13/496

**Language of the proceedings:** EN

**Title of invention:**

ABSORBENT ARTICLE

**Patent Proprietor:**

Essity Hygiene and Health Aktiebolag

**Opponent:**

THE PROCTER & GAMBLE COMPANY

**Headword:**

**Relevant legal provisions:**

EPC Art. 101, 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked

**Decisions cited:**

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

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1090/16 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 11 March 2021**

**Appellant:** THE PROCTER & GAMBLE COMPANY  
(Opponent) One Procter & Gamble Plaza  
Cincinnati, Ohio 45202 (US)

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

**Respondent:** Essity Hygiene and Health Aktiebolag  
(Patent Proprietor) 405 03 Göteborg (SE)

**Representative:** Rehse, Helen  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 February 2016 concerning maintenance of the  
European Patent No. 2309966 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Hannam  
E. Kossonakou

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 29 February 2016 the opposition division found the patent in an amended form according to the main request to meet the requirements of the EPC.
- II. An appeal against this decision was filed by the appellant (opponent) requesting 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 auxiliary request 1.
- IV. With letter of 21 February 2020 the respondent submitted further auxiliary requests 2 and 3.
- V. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion on the objections to the requests on file.
- VI. With letter of 7 May 2020 the respondent withdrew all requests on file and submitted a new main request.
- VII. Oral proceedings before the Board were held by video conference on 11 March 2021, during which the respondent stated unequivocally that it no longer approved the text, on the basis of which the opposition division intended to maintain the patent and that it withdrew its main request.

### **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 the respondent 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, for other reasons, in Article 101 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 237/86,  
T 459/88, 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