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**Datasheet for the decision
of 6 October 2020**

Case Number: T 1467/16 - 3.2.06

Application Number: 10182065.2

Publication Number: 2324805

IPC: A61F13/532, A61F13/536,
A61F13/15, A61F13/53,
A61F13/539

Language of the proceedings: EN

Title of invention:
Absorbent core for an absorbent article

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Essity Hygiene and Health Aktiebolag

Headword:

Relevant legal provisions:
EPC Art. 101

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Basis of decision - text or agreement to text withdrawn by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

Boards of Appeal

Chambres de recours

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Case Number: T 1467/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 6 October 2020

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

Representative: Essity Hygiene and Health AB
Essity IP Department
405 03 Göteborg (SE)

Respondent: The Procter & Gamble Company
(Patent Proprietor) 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
22 April 2016 concerning maintenance of the
European Patent No. 2324805 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
W. Ungler

Summary of Facts and Submissions

- I. In its interlocutory decision dated 22 April 2016 the opposition division found European patent No. 2 324 805 in an amended form 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 one of a series of auxiliary requests.
- IV. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion which indicated that the appeal was likely to be successful.
- V. With letter of 21 September 2020, the respondent informed the Board as follows:
'... we hereby unconditionally withdraw all of our requests in relation to the subject opposition appeal proceedings and withdraw our approval for the text as-granted, with the intention that the patent should be revoked'.
- VI. With communication of 5 October 2020, the scheduled oral proceedings were cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC 1973, 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. 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. With letter of 21 September 2020 the respondent withdrew its approval of any text for maintenance of the patent. There is therefore no text of the patent on the basis of which the Board can consider the appeal. Moreover the respondent clarified in its letter that it wished that the patent be revoked.
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. Thus, in view of there being no text of the patent on the basis of which the Board can consider the appeal, the only possibility is for the Board to revoke the patent as envisaged, albeit for other reasons, in Article 101 EPC.
4. 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