

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 3 September 2020**

Case Number: T 1832/16 - 3.2.06

Application Number: 07736086.5

Publication Number: 2054001

IPC: A61F13/15, A61F13/20

Language of the proceedings: EN

Title of invention:
LEG CUT-OUT STAGES OF DEVELOPMENT

Patent Proprietor:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:
THE PROCTER & GAMBLE COMPANY
Paul Hartmann AG

Headword:

Relevant legal provisions:
EPC Art. 101, 105a(2), 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Basis of decision - text or agreement to text withdrawn by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, T 0170/15

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 1832/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 September 2020

Appellant: THE PROCTER & GAMBLE COMPANY
(Opponent 1) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

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

Appellant: Paul Hartmann AG
(Opponent 2) Paul-Hartmann-Strasse 12
89522 Heidenheim (DE)

Representative: DREISS Patentanwälte PartG mbB
Friedrichstraße 6
70174 Stuttgart (DE)

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

Representative: Dehns
St. Bride's House
10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 July 2016 concerning maintenance of the
European Patent No. 2054001 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

In its interlocutory decision dated 6 July 2016 the opposition division found that the patent according to the proprietor's main request met the requirements of the EPC.

- I. Appeals against this decision were filed by each of the appellants (opponent I and opponent II) requesting that the decision under appeal be set aside and the patent be revoked.
- II. In its letter of response, the respondent (patent proprietor) requested that the appeals be dismissed or, in the alternative, that the patent be maintained according to one of auxiliary requests 1 to 3.
- III. In preparation for oral proceedings the Board issued a communication containing *inter alia* its provisional view on issues under Articles 52, 83, 54, 56 and 123(2) EPC in respect of the various requests.
- IV. With letter dated 11 August 2020, the respondent withdrew all its requests, withdrew its approval of the granted text in any form and requested that the patent be revoked.
- V. 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. 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 its letter dated 11 August 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. By explicitly requesting revocation of the patent it is moreover clear that the respondent wishes to prevent any text whatsoever of the patent from being maintained.
3. However, the patent proprietor cannot have the proceedings terminated by stating that it is surrendering the European patent as there is no provision for this in the EPC. Also 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.
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 T73/84, T186/84, T237/86, T459/88, T655/01, T1526/06, T1960/12 and T170/15.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated