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**Datasheet for the decision
of 26 November 2021**

Case Number: T 0432/17 - 3.2.06

Application Number: 05759252.9

Publication Number: 1901690

IPC: A61F13/49, A61F13/15,
A61F13/505, A61F13/496

Language of the proceedings: EN

Title of invention:

A PANT-TYPE ABSORBENT ARTICLE HAVING AN ELASTIC WAISTBAND

Patent Proprietor:

SCA Hygiene Products AB

Opponents:

THE PROCTER & GAMBLE COMPANY
Paul Hartmann AG

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

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patent proprietor - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 0432/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 26 November 2021

Appellant: SCA Hygiene Products AB
(Patent Proprietor) 405 03 Göteborg (SE)

Representative: Valea AB
Box 1098
405 23 Göteborg (SE)

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)

Party as of right: Paul Hartmann AG
(Opponent 2) Paul-Hartmann-Strasse 12
89522 Heidenheim (DE)

Representative: DREISS Patentanwälte PartG mbB
Postfach 10 37 62
70032 Stuttgart (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 December 2016 concerning maintenance of the
European Patent No. 1901690 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. Appeals were filed by the appellant/proprietor and appellant/opponent 1 against the interlocutory decision of the opposition division in which it found that, account being taken of the amendments according to auxiliary request 1, the European patent No. 1 901 690 met the requirements of the EPC.
- II. The appellant/proprietor requested that the decision under appeal be set aside and the patent be maintained as granted. Subsidiarily it requested that the patent be maintained according to one of auxiliary requests 1 to 7.
- III. The appellant/opponent 1 requested that the decision under appeal be set aside and the patent be revoked.
- IV. The respondent/opponent 2 requested that the proprietor's appeal be dismissed and that the patent be revoked inasmuch as would extend beyond auxiliary request 1 of the opposition proceedings.
- V. The Board issued a summons to oral proceedings and a subsequent communication pursuant to Article 15(1) RPBA.
- VI. In view of the coronavirus-pandemic, the format of the oral proceedings was changed to a videoconference.
- VII. The appellant/proprietor requested that the oral proceedings be postponed until they could be held in person at the premises of the Boards of Appeal.

- VIII. Oral proceedings in the form of a videoconference were held on 23 March 2021, during which the appellant/proprietor maintained its request for in-person oral proceedings and further requested that the proceedings be stayed in view of the then pending referral under G1/21. The appellant/opponent 1 and the respondent/opponent 2 requested that their costs for the oral proceedings of that day be borne by the patent proprietor.
- IX. The oral proceedings were then closed and a new date for in-person oral proceedings was set.
- X. In its submission dated 27 October 2021, the appellant/proprietor requested revocation of the patent and stated that it would not attend the oral proceedings, that it withdrew the appeal, that it no longer approved the text in which the patent was granted and that it would not be submitting an amended text.
- XI. The oral proceedings were subsequently cancelled.
- XII. In the following, both the appellant/opponent 1 and the respondent/opponent 2 withdrew their requests for apportionment of costs.

Reasons for the Decision

1. Since both opponents have withdrawn their respective requests, there is no request for apportionment of costs on file. There is thus no need for the Board to decide on this matter.
2. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor.

3. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent, withdraws all pending requests, and declares that it will not be submitting an amended text.

4. There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, IV.D.2).

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. Hannam

Decision electronically authenticated