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**Datasheet for the decision
of 10 February 2022**

Case Number: T 1662/17 - 3.2.06

Application Number: 06806699.2

Publication Number: 2079427

IPC: A61F13/49, A61F13/56

Language of the proceedings: EN

Title of invention:

ABSORBENT ARTICLE

Patent Proprietor:

SCA Hygiene Products AB

Opponent:

Paul Hartmann AG

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1662/17 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 10 February 2022

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

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

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

Representative: DREISS Patentanwälte PartG mbB
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
30 May 2017 concerning maintenance of the
European Patent No. 2079427 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: T. Rosenblatt
W. Ungler

Summary of Facts and Submissions

- I. The appellants (proprietor and opponent) filed appeals against the interlocutory decision of the opposition division, in which the opposition division found that European patent No. 2 079 427 in an amended form met the requirements of the EPC.
- II. The parties were summoned to oral proceedings before the Board of Appeal. With a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA 2020) the parties were informed of the Board's provisional opinion.
- III. Oral proceedings before the Board were held on 10 February 2022 by videoconference.

At the end of the oral proceedings, the appellant-proprietor withdrew all of its requests and its consent to maintenance of any text of the patent.

The appellant-opponent requested that the decision under appeal be set aside and the European patent be revoked.

Reasons for the Decision

1. According to Article 113(2) EPC the European Patent Office shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.

2. The appellant-proprietor has withdrawn its approval to the text of the patent as granted and all auxiliary requests submitted during the appeal procedure. There is thus no text of the patent upon which maintenance of the patent could be based. Under these circumstances and in accordance with the case law of the boards of appeal the only option available to the Board is to revoke the patent according to Article 101 EPC (see for example T 2405/12 and decisions cited therein).

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