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**Datasheet for the decision  
of 18 March 2021**

**Case Number:** T 1671/17 - 3.2.06

**Application Number:** 09732593.0

**Publication Number:** 2268249

**IPC:** A61F13/491, A61F13/53,  
A61F13/49, A61F13/551

**Language of the proceedings:** EN

**Title of invention:**

DISPOSABLE ABSORBENT ARTICLES HAVING GENDER-SPECIFIC  
CONTAINMENT FLAPS

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

Paul Hartmann AG

**Headword:**

**Relevant legal provisions:**

EPC Art. 101, 105a(2), 113(2)

**Keyword:**

**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**

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**Case Number: T 1671/17 - 3.2.06**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 18 March 2021**

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

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

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

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 June 2017 concerning maintenance of the  
European Patent No. 2268249 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** P. Cipriano  
E. Kossonakou

## **Summary of Facts and Submissions**

- I. In its interlocutory decision dated 29 June 2017 the opposition division found that European patent No. 2 268 249 in an amended form met the requirements of the EPC.
- II. This decision was appealed by both the opponent and patent proprietor. In light of this the Board will continue to refer to the parties as opponent and patent proprietor.
- III. The opponent requested that the decision under appeal be set aside and the patent be revoked.  
  
The proprietor requested that the decision under appeal be set aside and the patent be maintained according to a main request or, subsidiarily, according to any one of its auxiliary requests 1 to 11.
- IV. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion on the various requests.
- V. With letter of 15 February 2021, the proprietor informed the Board as follows:  
"we hereby withdraw all our requests in connection with the above patent, and withdraw approval of the granted text in any form. Consequently, revocation of the patent is requested."
- VI. The scheduled 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 letter of 15 February 2021 the proprietor 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 proprietor 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