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**Datasheet for the decision
of 27 September 2021**

Case Number: T 0761/18 - 3.2.06

Application Number: 10150871.1

Publication Number: 2177188

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

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, 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Basis of decision - text or agreement to text withdrawn by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 1832/16

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0761/18 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 27 September 2021

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

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

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
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 January 2018 concerning maintenance of the
European Patent No. 2177188 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
A. Jimenez

Summary of Facts and Submissions

- I. In its interlocutory decision dated 25 January 2018 the opposition division found that European patent No. 2 177 188 in an amended form met 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 reply to the statement of grounds of appeal, the respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of auxiliary requests 1 to 13.
- IV. In preparation for oral proceedings, the Board issued a communication containing *inter alia* its provisional view on objections under Article 123(2) EPC in respect of all the requests.
- V. With letter dated 17 September 2021, the respondent (patent proprietor) withdrew all its requests, withdrew its approval of the granted text and requested that the patent be revoked.
- VI. 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 17 September 2021, 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.
3. By explicitly requesting revocation of the patent the respondent made its intention to prevent any text whatsoever of the patent from being maintained unequivocal, although 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.
4. In these circumstances, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. As there is no provision in the EPC allowing the patent proprietor to surrender the patent and bring the proceedings to an end, the only possibility in such a case is for the Board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.
5. It follows, also in line with the 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, T 1960/12 and T 1832/16, that the patent must be revoked.

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