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**Datasheet for the decision  
of 22 October 2021**

**Case Number:** T 2168/18 - 3.2.06

**Application Number:** 08807790.4

**Publication Number:** 2240144

**IPC:** A61F13/15, A61F13/49, A61F13/56

**Language of the proceedings:** EN

**Title of invention:**

ABSORBENT ARTICLE HAVING A FUNCTIONAL AND PARTIALLY ENCIRCLING  
WAISTBAND

**Patent Proprietor:**

KIMBERLY-CLARK WORLDWIDE, INC.

**Opponent:**

Essity Hygiene and Health Aktiebolag

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  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

**Decisions cited:**

T 0073/84, T 0459/88, T 0655/01, T 1526/06, T 1960/12

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2168/18 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 22 October 2021**

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

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

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

**Representative:** Dehns  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 20 July 2018 rejecting the opposition filed against European patent No. 2240144 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Hannam  
J. Hoppe

## **Summary of Facts and Submissions**

- I. This decision concerns the appeal filed by the opponent against the decision of the opposition division to reject the opposition to European patent No. EP-B-2 240 144.
- II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.
- III. In its letter of reply, the respondent (patent proprietor) requested that the appeal be dismissed (main request) or that the patent be maintained according to one of auxiliary requests 1 to 11. With letter of 7 May 2020, it withdrew auxiliary requests 1 to 11 and filed new auxiliary requests 1 and 2.
- IV. In preparation for oral proceedings, the Board issued a communication containing its provisional opinion regarding the appeal.
- V. With letter of 21 September 2021 the respondent withdrew all requests in connection with the patent, withdrew approval of the granted text in any form and requested revocation of the patent.
- VI. The scheduled oral proceedings were cancelled.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, 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. Such an agreement cannot be deemed to exist if the patent proprietor, as in the present case, expressly states that it no longer approves any text for maintenance of the patent and also withdraws all its requests on file.
3. 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. It is moreover clear that the respondent wishes to prevent any text whatsoever of the patent from being maintained.
4. 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.
5. 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 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