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

**Case Number:** T 2445/18 - 3.2.06

**Application Number:** 13792161.5

**Publication Number:** 2916788

**IPC:** A61F13/511, A61F13/514,  
B32B5/26, D04H1/4291, D04H1/54,  
D04H3/007, D04H3/14, D04H3/16,  
D04H13/00

**Language of the proceedings:** EN

**Title of invention:**  
ARTICLE(S) WITH SOFT NONWOVEN WEB

**Patent Proprietor:**  
The Procter & Gamble Company

**Opponent:**  
Kimberly-Clark Worldwide, Inc.

**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Basis of decision - text or agreement to text withdrawn by  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:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2445/18 - 3.2.06

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

**Appellant:** Kimberly-Clark Worldwide, Inc.  
(Opponent) 2300 Winchester Road  
Neenah WI 54956 (US)

**Representative:** Dehns  
St. Bride's House  
10 Salisbury Square  
London EC4Y 8JD (GB)

**Respondent:** The Procter & Gamble Company  
(Patent Proprietor) One Procter & Gamble Plaza  
Cincinnati, OH 45202 (US)

**Representative:** Russell, Tim  
Venner Shipley LLP  
200 Aldersgate  
London EC1A 4HD (GB)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 26 July 2018  
rejecting the opposition filed against European  
patent No. 2916788 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. In its decision dated 26 July 2018 the opposition division rejected the opposition filed against the European patent No. 2 916 788.
- II. An appeal was filed by the opponent requesting that the decision under appeal be set aside and the patent be revoked.
- III. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of one of auxiliary requests 1 to 6.
- IV. The Board issued a summons to oral proceedings.
- V. In its letter dated 13 October 2021, the respondent declared that it no longer approved the text of the patent as granted, it withdrew all pending claim requests, and declared that it would not be submitting an amended text and not attend oral proceedings.
- VI. The oral proceedings were subsequently cancelled.

## **Reasons for the Decision**

1. 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 of the patent.
2. 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.

3. 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 e.g. 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. Harrison

Decision electronically authenticated