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**Datasheet for the decision
of 31 March 2023**

Case Number: T 2447/19 - 3.2.06

Application Number: 11004097.9

Publication Number: 2368534

IPC: A61F13/494, A61F13/49,
A61F13/15

Language of the proceedings: EN

Title of invention:

Absorbent garment with strand coated adhesive components

Patent Proprietor:

Kimberly-Clark Worldwide, Inc.

Opponent:

Ontex BV

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Basis of decision - text or agreement to text withdrawn by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

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European Patent Office
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Case Number: T 2447/19 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 31 March 2023

Appellant: Ontex BV
(Opponent) Genthof 5
9255 Buggenhout (BE)

Representative: Abthorpe, Mark
Kilburn & Strode LLP
Lacon London
84 Theobalds Road
London WC1X 8NL (GB)

Respondent: Kimberly-Clark Worldwide, Inc.
(Patent Proprietor) 401 North Lake Street
Neenah, Wisconsin 54957 (US)

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

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 25 June 2019
rejecting the opposition filed against European
patent No. 2368534 pursuant to Article 101(2)
EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division in which it rejected the opposition against European patent No. 2 368 534.
- II. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- III. The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted (main request), or, as an auxiliary measure, that the patent be maintained in amended form based on one of auxiliary requests 1 to 5 as filed together with the reply to the statement of grounds of appeal.
- IV. The Board issued a summons to oral proceedings and a subsequent communication indicating its preliminary view on several issues of the case.
- V. With letter dated 27 March 2023 the respondent withdrew all its requests and also its approval of the granted text in any form. It also requested revocation of the patent.

Reasons for the Decision

1. Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon a European patent only in the text submitted to it, or agreed, by the patent proprietor. Such an agreement cannot be deemed to exist where the patent proprietor states that it no longer approves the text of the patent, withdraws all pending requests, and proposes no text for maintenance of the patent.

2. In such a case, there is no text of the patent on the basis of which the Board can consider the appeal. Under 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, 10th edition 2022, 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