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**Datasheet for the decision
of 9 January 2025**

Case Number: T 1564/22 - 3.2.06

Application Number: 12779814.8

Publication Number: 2704678

IPC: A61F13/53, A61F13/20

Language of the proceedings: EN

Title of invention:

TAMPON ABSORBENT

Patent Proprietor:

Kimberly-Clark Worldwide, Inc.

Opponent:

THE PROCTER & GAMBLE COMPANY

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Basis of decision - text or agreement to text withdrawn by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
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Case Number: T 1564/22 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 9 January 2025

Appellant: THE PROCTER & GAMBLE COMPANY
(Opponent) One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

Representative: Elkington and Fife LLP
Prospect House
8 Pembroke Road
Sevenoaks, Kent TN13 1XR (GB)

Respondent: Kimberly-Clark Worldwide, Inc.
(Patent Proprietor) Neenah, Wisconsin 54956 (US)

Representative: Dehns
10 Old Bailey
London EC4M 7NG (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 April 2022 concerning maintenance of the
European Patent No. 2704678 in amended form.**

Composition of the Board:

Chairman M. Hannam
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 that found the then pending auxiliary request 3 to meet the requirements of the EPC.
- II. With its grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked. With its reply, the respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained in amended form based on the auxiliary request 1, filed with the reply to the grounds of appeal.
- III. The Board issued a summons to oral proceedings and a subsequent communication indicating its preliminary view on several issues of the case.
- IV. At the oral proceedings before the Board, the respondent withdrew all pending claim requests, and declared its disapproval of any text for maintenance 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. Hannam

Decision electronically authenticated