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**Datasheet for the decision
of 10 April 2025**

Case Number: T 0619/23 - 3.2.06

Application Number: 14791015.2

Publication Number: 2991605

IPC: A61F13/49, A61F13/496,
A61L15/46, A61F13/494,
A61F13/532

Language of the proceedings: EN

Title of invention:

ABSORBENT GARMENT

Patent Proprietor:

Knix Wear Inc.

Opponent:

THE PROCTER & GAMBLE COMPANY

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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



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

Case Number: T 0619/23 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 10 April 2025

Appellant: Knix Wear Inc.
(Patent Proprietor) 70 Claremont Street
Toronto ON M6J 2M5 (CA)

Representative: EIP
Fairfax House
15 Fulwood Place
London WC1V 6HU (GB)

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)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
12 January 2023 concerning maintenance of the
European Patent No. 2991605 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Dorfstätter
S. Ruhwinkel

Summary of Facts and Submissions

- I. Appeals were filed by both the opponent and the patent proprietor against the interlocutory decision of the opposition division that found auxiliary request 1 to meet the requirements of the EPC.
- II. The appellant/patent proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or, alternatively, that the patent be maintained in amended form according to auxiliary requests 1 to 12, filed with its statement of grounds of appeal.
- III. The appellant/opponent requested that the decision under appeal be set aside and the patent be revoked.
- IV. The Board issued a summons to oral proceedings and a subsequent communication indicating its preliminary view on several issues of the case.
- V. At the oral proceedings before the Board, the appellant/patent proprietor withdrew its appeal and all its requests on file and stated that it had no further requests. The appellant/opponent maintained its initial requests.

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 withdraws all pending requests, and proposes no text for maintenance of the patent, which

can only be understood as disapproval of any 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 order maintenance of the patent in any form. 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