DECISION
of 18 January 2005

Case Number: T 0116/04 – 3.2.6
Application Number: 95927351.7
Publication Number: 0778763
IPC: A61F 13/46
Language of the proceedings: EN

Title of invention:
Thin absorbent article having wicking and crush resistant properties

Patentee:
KIMBERLY-CLARK WORLDWIDE, INC.

Opponents:
The Procter & Gamble Company
SCA Hygiene Products AB

Headword:
-

Relevant legal provisions:
EPC Art. 113(2)

Keyword:
"Revocation of the patent requested by patent proprietor"

Decisions cited:
T 0073/84

Catchword:
-
Case Number: T 0116/04 - 3.2.6

DECISION
of the Technical Board of Appeal 3.2.6
of 18 January 2005

Appellant: The Procter & Gamble Company
(Opponent I)
One Procter & Gamble Plaza
Cincinnati, Ohio 45202 (US)

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

Respondent: KIMBERLY-CLARK WORLDWIDE, INC.
(Proprietor of the patent)
401 North Lake Street
Neenah, Wisconsin 54956 (US)

Representative: Davies, Christopher Robert
Frank B. Dehn & Co.,
European Patent Attorneys
179 Queen Victoria Street
London EC4V 4EL (GB)

Other Party: SCA Hygiene Products AB
(Opponent II)
S-40503 Göteborg (SE)

Representative: Egeröd, Lisbeth
Ström & Gulliksson IP AB
Lindholmspiren 5
S-417 56 Göteborg (SE)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 5 November 2003 rejecting the opposition filed against European patent No. 0778763 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. L. De Crignis
J. H. Van Moer
Summary of Facts and Submissions

I. The opposition division rejected the opposition against European patent No. 0 778 763 with decision posted on 5 November 2003.

II. The appellant (opponent 01) appealed against this decision by a letter filed on 20 December 2003, paid the fee for appeal on the same day and filed a Statement of Grounds of Appeal on 9 March 2004. It requested that the patent be revoked.

III. In a letter dated 6 January 2005, the respondent (patentee) withdrew its approval of the text of the patent in the form in which it was upheld by the opposition division, or in any other form, and requested revocation of the patent.

Reasons for the Decision

1. The appeal is admissible.

2. It follows from Article 113(2) EPC that a European patent cannot be maintained against the Proprietor's will. Thus, in view of the Respondent's request for revocation of its patent, the present European patent has to be revoked (cf. T 73/84; OJ EPO 1985, 241).
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. European patent No. 0 778 763 is revoked.

The Registrar: M. Patin

The Chairman: P. Alting van Geusau