Datasheet for the decision of 8 August 2019

Case Number: T 1785/16 - 3.2.05
Application Number: 08719714.1
Publication Number: 2146917
IPC: B65H29/60, B65H29/62, A61F13/15
Language of the proceedings: EN

Title of invention:
Method for selective folding or redirecting of cut web products

Patent Proprietor:
The Procter & Gamble Company

Opponent:
Kimberly-Clark Worldwide, Inc.

Relevant legal provisions:
EPC Art. 101, 113(2)

Keyword:
Withdrawal of the approval of the text of the patent as granted
Decisions cited:
T 0073/84, T 0186/84, T 0237/86, T 0459/88, T 0655/01,
T 1526/06, T 1960/12, T 0522/15
DECISION
of Technical Board of Appeal 3.2.05
of 8 August 2019

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

(Opponent)

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

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

(Patent Proprietor)

Representative: P&G Patent Germany
Procter & Gamble Service GmbH
Sulzbacher Straße 40
65824 Schwalbach am Taunus (DE)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted on 18 May 2016 rejecting the opposition filed against European patent No. 2146917 pursuant to Article 101(2) EPC.

Composition of the Board:

Chairman M. Poock
Members: C. Brandt
T. Vermeulen
Summary of Facts and Submissions

I. In its interlocutory decision dated 18 May 2016 the opposition division found that European patent No. 2 146 917 met the requirements of the EPC.

II. An appeal against this decision was filed on 22 July 2016 by the opponent (appellant) requesting that the decision be set aside and the patent be revoked.

III. In its letter of response dated 20 January 2017, the patent proprietor (respondent) requested that the appeal be dismissed and that the patent be maintained as granted.

IV. With letter of 4 July 2019 the respondent indicated that it withdrew approval of the text of the patent granted and did not submit any amended text.

Reasons for the Decision

1. Under Article 113(2) EPC, the European Patent Office shall consider and decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent. The principle has to be strictly observed also in opposition and opposition appeal proceedings.

2. Since the text of the patent is at the disposition of the patent proprietor, a patent cannot be maintained against the patent proprietor's will. The respondent, with its letter of 4 July 2019, withdrew its approval of any text for a maintenance of the patent. There is therefore no text of the patent on the basis of which the board can consider the appeal. It is moreover clear
that the respondent wishes to prevent any text whatsoever of the patent from being maintained.

3. It is noted that revocation of the patent at the request of the patent proprietor in the framework of opposition or opposition appeal proceedings is not possible, as it is expressly excluded by Article 105a(2) EPC. At the same time, the proceedings ought to be terminated as quickly as possible in the interests of legal certainty. The only possibility in such a case is for the board to revoke the patent as envisaged, for other reasons, in Article 101 EPC.

4. In view of the above, the board concluded that the patent must be revoked. This conclusion is also in line with case law developed by the Boards of Appeal in *inter alia* decisions T 73/84, T 186/84, T 237/86, T 459/88, T 655/01, T 1526/06, T 1960/12 and T 522/15.
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The European patent is revoked.

The Registrar: The Chairman:

M. Patin M. Poock

Decision electronically authenticated