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**Datasheet for the decision
of 21 June 2021**

Case Number: T 2321/17 - 3.2.01

Application Number: 11186405.4

Publication Number: 2446756

IPC: A24B13/00, B65B37/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for introducing additives to smokeless tobacco products

Patent Proprietor:

British American Tobacco (Investments) Limited
Fiedler & Lundgren AB

Opponent:

Swedish Match North Europe AB

Headword:

Relevant legal provisions:

EPC Art. 84
EPC R. 42

Keyword:

Description adapted to the claims

Decisions cited:

Catchword:



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
Fax +49 (0)89 2399-4465

Case Number: T 2321/17 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 21 June 2021

Appellant: British American Tobacco (Investments) Limited
(Patent Proprietor 1) Globe House
1 Water Street
London WC2R 3LA (GB)

Appellant: Fiedler & Lundgren AB
(Patent Proprietor 2) P.O. Box 9041
Stenaldersgatan 23
200 39 Malmo (SE)

Representative: D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Respondent: Swedish Match North Europe AB
(Opponent) 118 85 Stockholm (SE)

Representative: Valea AB
Box 7086
103 87 Stockholm (SE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 August 2017 concerning maintenance of the
European Patent No. 2446756 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
 A. Jimenez

Summary of Facts and Submissions

- I. The appeal of the patent proprietor lies against the decision of the Opposition Division concerning the maintenance of the European Patent No. 2446756 in amended form.
- II. With the statement of grounds of appeal, the appellant (patent proprietor) requested to set aside the decision of the Opposition Division and to maintain the patent as granted (i.e. to reject the opposition) as a main request, or, in the alternative, to maintain the patent according to the first or second auxiliary requests filed therewith. With letter of 31 December 2019 the appellant filed new first and second auxiliary requests and requested that the previous first and second auxiliary requests be renamed third and fourth auxiliary requests, respectively.

The respondent requested to dismiss the appeal.

- III. With communication of 19 April 2021 pursuant to Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) the Board expressed its preliminary view of the case. In particular, the Board's assessment was negative for the main request and the first and second auxiliary requests but positive for the third auxiliary request. The Board further pointed out that a decision without oral proceedings could be issued if the appellant made its third auxiliary request the main request.
- IV. With letter of 15 June 2021 the appellant conditionally withdrew the main request and the first, second and

fourth auxiliary requests and made the third auxiliary request the main request. These amendments of the case were conditional on the proposal of the Board set out in the above mentioned communication being implemented.

- V. With letter dated 16 June 2021 the respondent maintained the request to dismiss the appeal and to uphold the decision of the Opposition Division, but withdrew the request for oral proceedings.

Oral proceedings scheduled for 28 July 2021 were thus cancelled.

Reasons for the Decision

1. The main request of the appellant (filed as first auxiliary request with the statement of grounds of appeal and renamed third auxiliary request with letter dated 31 December 2019) differs from the version of the patent as maintained by the Opposition Division only in a minor amendment to paragraph 30 of the description in which the wording "Figures 6, 7 and 8 are not in accordance with the invention" is replaced by "Figures 6, 7 and 8 are not in accordance with the process of the invention".
2. The set of claims of the main request being identical to the set of claims of the version maintained by the Opposition Division with its decision, the Board has no power to carry out a judicial review of the claimed subject-matter since the opponent did not file an appeal against the interlocutory revision of the Opposition Division (as acknowledged by the respondent

in the reply to the statement of grounds of appeal, page 15, under "AR1").

3. The respondent did not submit any objections to the above mentioned amendment to paragraph 30 of the description.

The Board has neither any objections in this regard. Indeed, although claims 1 to 13 of the patent as maintained by the Opposition Division relate to a process comprising the limitation that the additive is introduced in the container, claim 14 relates to an apparatus and does not include this limitation. Accordingly, figures 6, 7 and 8 are only not in accordance with the process of the invention (rather than being not in accordance with the invention in general terms as in the version maintained by the Opposition Division), as they are in accordance with the apparatus claim 14 (Article 84 and Rule 42 EPC).

4. Finally the Board notes that the conditions set out in the appellant's letter dated 15 June 2021 (see point IV above) are met and therefore this decision is taken without oral proceedings and with the appellant's main request being the first auxiliary request filed with the statement of grounds of appeal and renamed third auxiliary request with letter dated 31 December 2019.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent in amended form on the basis of the following documents:
 - description, paragraphs:
 - 1-12, 16-29, 31-51, 53, 55-58 as granted,
 - 13, 30, 52, 54 as filed with the statement of grounds of appeal;
 - claims 1 to 17 as filed with the statement of grounds of appeal as the first auxiliary request;
 - drawings 1 to 8 as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated