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**Datasheet for the decision
of 3 February 2021**

Case Number: T 2930/18 - 3.2.01

Application Number: 12750770.5

Publication Number: 2753202

IPC: A24F47/00

Language of the proceedings: EN

Title of invention:
HEATING SMOKEABLE MATERIAL

Patent Proprietor:
Nicoventures Trading Limited

Opponent:
Philip Morris Products S.A.

Headword:

Relevant legal provisions:
EPC Art. 54

Keyword:
Novelty - main request (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2930/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 3 February 2021

Appellant: Nicoventures Trading Limited
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 October 2018 concerning maintenance of the
European Patent No. 2753202 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
P. Guntz

Summary of Facts and Submissions

- I. The appeals were filed by the appellant 2 (patent proprietor) and appellant 1 (opponent) against the interlocutory decision of the Opposition Division finding that, on the basis of the auxiliary request 1, the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. In particular, the Opposition Division decided that the main request corresponding to the patent as granted was not novel over D1, D2, D4, D5, D6 and D7.
- III. Oral proceedings were held before the Board on 3 February 2021.
- IV. At the end of the oral proceedings the appellant 2 (patent proprietor) withdrew all auxiliary requests; they requested that the decision under appeal be set aside and that the patent be maintained as granted.

The appellant 1 (opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

- V. Claim 1 of the main request reads as follows:

An apparatus (1) comprising: an elongate heater (3) configured to heat smokeable material (5) contained within the apparatus (1) in use to volatilize at least one component of the smokeable material (5), the heater (3) comprising a plurality of independently controllable heating regions (10) arranged along a longitudinal axis of the heater (3) to independently heat sections of smokeable material (5);

characterised by:

a smokeable material heating chamber (4) arranged adjacent to a longitudinal surface of the heater (3) so that thermal energy emitted by the heating regions (10) travels in a radial direction from the longitudinal surface of the heater (3) into the heating chamber (4) to independently heat the sections of smokeable material (5).

VI. In the present decision, reference is made to the following document:

D1: US 5.269,327

Reasons for the Decision

1. The Board agrees with the findings of the Opposition Division and the reasons given under point 14 on pages 6 and 7 of the decision under appeal, to which reference is made and which findings are adopted by the Board, that the subject-matter of claim 1 is not novel over D1.

2. The appellant 2 submitted that in D1 the smokeable material is fixedly coated onto the heater structure and thus D1 would not disclose a smokeable material heating chamber. However, as correctly pointed out by the Opposition Division, claim 1 does not further specify how the smokeable material is received in the smokeable material heating chamber and therefore the tobacco flavor medium coated on the inner surface 724 of cylinder 72 shown in Fig. 7C of D1 occupies a space which forms a smokeable material heating chamber.

3. The appellant 2 further submitted that the smokeable material heating chamber according to claim 1 must be part of the apparatus whilst in D1 it is part of a consumable. Here as well, as correctly pointed out by the Opposition Division, even if in D1 the heating elements forming the heater are disposable, the heater is connected to the remaining parts of the apparatus in order for the latter to be used and thus the heater, and the smokeable material heating chamber as well, forms part of the apparatus as a whole.

4. Finally, the Board agrees with the Opposition Division considering that D1 discloses a "heater comprising a plurality of independently controllable heating regions" as defined in claim 1.

4.1 Appellant 2 construed the expression "heating regions independently controllable" as meaning that the control of one heating region is not dependent on the control of another heating region. This interpretation is supported in their view by paragraphs [0047], [0053] and [0054] of the patent.

Furthermore, referring to paragraph [0034] of the patent, the appellant 2 argued that a distinction should be made between the term "individually" controllable heating regions and "independently" controllable heating regions.

D1, column 2, lines 11-19, figure 2, column 20-59 and figure 7c and column 6, line 60 to column 7, line 2 disclosed arrangements where it was not possible to activate more than one heating region at a time. According to the appellant 2, in these arrangements, the control of a heating region was not independent, but was dependent on the control of the other heating regions as the ability to control any one of the

heating regions depended on not activating any other one of the heating regions.

4.2 The Board judges that the interpretation of the expression "heating regions independently controllable" by appellant 2 is too narrow. Instead the interpretation of the appellant 1 and the Opposition Division is correct. "Heating regions independently controllable" means that a heating region can be activated without having to activate the entire heater, i.e. all the other heating regions. This interpretation is consistent with the passages of the application as filed cited by appellant 2 (page 7, lines 26-32, page 8, lines 3-5 and lines 24-25, page 9, lines 14-20, page 10, lines 26-31, page 13, lines 26-28 and page 14, line 8-11; these passages having their equivalent in the patent as granted).

4.3 D1, figure 7c and column 6, line 60 - column 7, line 2, discloses a hollow cylinder made of graphite and divided into ten opposed pairs of segments. When one pole of power source is connected to each of the opposed segments, heat is generated predominantly in that pair of segments only.

D1 therefore discloses that one pair of opposed segments can be heated without the entire graphite hollow cylinder being heated i.e. without the other pairs of opposed segments being heated. Therefore, the pairs of opposed segments (the heating regions) are independently controllable with regard to the other pairs of opposed segments (the other heating regions).

4.4 The argument of appellant 2 that in D1 the heating regions are not independently controllable as the ability to control any one of the heating regions

depends on not activating any other one of the heating regions is not convincing.

If only one heating region is activated, then the rest of the heating regions are not activated. This is the case for the heater in D1, and for any heater with independently controllable heating regions. For example if only two heating regions are activated, then these two heating regions "depend" on not activating any other one of the heating regions similarly if only half of the heating regions are activated, then the half of activated heating regions "depends" on the other half of the heating regions not being activated. However, the person skilled in the art would still refer to such regions as being independently controllable.

- 4.5 Thus, the Opposition Division correctly found that the main request is not allowable.
5. No other sets of claims being on file the patent has to be revoked.

Order

For these reasons it is decided that:

1. The decision is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:



D. Magliano

G. Pricolo

Decision electronically authenticated