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**Datasheet for the decision
of 28 May 2025**

Case Number: T 2654/22 - 3.2.04

Application Number: 17154225.1

Publication Number: 3180997

IPC: A24F47/00, A61M15/06,
A61M11/04, A61M16/00

Language of the proceedings: EN

Title of invention:

AN AEROSOL GENERATING SYSTEM HAVING MEANS FOR DETERMINING
DEPLETION OF A LIQUID SUBSTRATE

Patent Proprietor:

Philip Morris Products S.A.

Opponents:

British American Tobacco (Investments) Ltd
JT International S.A.

Headword:

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text and agreement to text withdrawn by
patent proprietor

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 2654/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 28 May 2025

Appellant: Philip Morris Products S.A.
(Patent Proprietor) Quai Jeanrenaud 3
2000 Neuchâtel (CH)

Representative: HGF
HGF Limited
1 City Walk
Leeds LS11 9DX (GB)

Appellant: British American Tobacco (Investments) Ltd
(Opponent 1) Globe House
1 Water Street
London, WC2R 3LA (GB)

Representative: D Young & Co LLP
3 Noble Street
London EC2V 7BQ (GB)

Party as of right: JT International S.A.
(Opponent 2) 8 rue Kazem Radjavi
1202 Geneva (CH)

Representative: Bandpay & Greuter
11 rue Christophe Colomb
75008 Paris (FR)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 October 2022 concerning maintenance of the
European Patent No. 3180997 in amended form.**

Composition of the Board:

Chairman A. Pieracci
Members: S. Hillebrand
 C. Heath

Summary of Facts and Submissions

I. Appeals were filed by the patent proprietor and opponent 1 against the interlocutory decision of the Opposition Division finding that the patent in suit in an amended form according to auxiliary request 2 met the requirements of the EPC.

In particular, the Opposition Division held that

- the subject-matter of granted claim 1 extended beyond the content of the earlier application;
- the subject-matter of claim 9 according to auxiliary request 1 (promoted auxiliary request 16) did as well, claim 4 of that request not being clear;
- auxiliary request 2 (promoted auxiliary request 16'), in which claims 4 and 9 were deleted, complied with the provisions of the EPC with regard to sufficiency, clarity, added matter, novelty, inventive step and was entitled to claim the priority of the earlier application.

II. In a communication pursuant to Rule 15(1) RPBA, the Board expressed the preliminary opinion that granted independent claims 1 and 11 seemed to have been amended with a feature not disclosed in the earlier application. This would not only lead to the extension of their subject-matter beyond the content of the earlier application, Article 100c), 76(1) EPC, but also to a trap situation, in which this undisclosed feature might not be removed without violation of Article 123(3) EPC.

III. With letter of 6 May 2025, the proprietor withdrew their appeal. With further letter of 22 May 2025, they withdrew their approval to the text as granted as well as any pending request.
Oral proceedings scheduled for 27 May 2025 were cancelled after receipt of this letter.

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

The original request of opponent 2, now party as of right, to dismiss the proprietor's appeal has become moot.

Reasons for the Decision

1. The appeal is admissible.
2. According to Article 113(2) EPC, a patent may be maintained only in a version approved by the proprietor, see CLB, 10th edition, IV.D.2. Since the proprietor stated in appeal proceedings that they no longer approved the text in which the patent had been granted and did not submit an amended text, the patent must be revoked without substantive examination of patentability.

Order

For these reasons it is decided that:

The patent is revoked.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated