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**Datasheet for the decision  
of 12 February 2025**

**Case Number:** T 0239/23 - 3.2.04

**Application Number:** 16150924.5

**Publication Number:** 3192380

**IPC:** A24B13/00, A24F23/00

**Language of the proceedings:** EN

**Title of invention:**  
ORAL POUCHED PRODUCT

**Patent Proprietor:**  
Swedish Match North Europe AB

**Opponents:**  
Sächsisches Textilforschungsinstitut e.V. (STFI)  
An-Institut der Technischen Universität Chemnitz  
Bergenstraße & Partners AB

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 111(1), 56, 83, 123(2)  
RPBA 2020 Art. 11

**Keyword:**

Novelty - (yes)

Appeal decision - remittal to the department of first instance  
(no)

Remittal - (no)

Inventive step - (yes)

Sufficiency of disclosure - (yes)

Amendments - allowable (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0239/23 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 12 February 2025**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
24 November 2022 concerning maintenance of the  
European Patent No. 3192380 in amended form.**

**Composition of the Board:**

**Chairman**           A. Pieracci  
**Members:**         C. Kujat  
                      C. Heath

## Summary of Facts and Submissions

I. The appeals lie from the interlocutory decision of the opposition division of the European Patent Office concerning maintenance of the European Patent No. 3 192 380 in amended form pursuant to Articles 101(3)(a) and 106(2) EPC.

II. The opposition division held that the patent as amended according to auxiliary request 1 and the invention to which it related met the requirements of the EPC, having regard inter alia to the following pieces of evidence:

D1 DE 20 2015 102564 U1

D2 A. Slater et al.: "Tencel® a versatile, high performance fibre for nonwovens", Lenzinger Berichte, Vol. 82 (2003) 37-42, XP002758767, veröffentlicht 2003

D11 US 2014/0242309 A1

D12 EP 2 692 254 A1

D19 J. Chen: "Synthetic textile fibers: regenerated cellulose fibers", Textiles and Fashion, 2015, Elsevier Ltd, S. 79 - 95

D28 WO 2016/083463 A1

D29 WO 2016/090075 A1

D38 US 9,044,049 B2

III. The appellant proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted (Main Request), in the auxiliary, that the patent be upheld on the basis of one of Auxiliary Requests 1 - 21, re-filed with the grounds of appeal.

- IV. The opponent 2 as appellant requests that the decision under appeal be set aside and the patent be revoked.
- V. The opponent 1 as a party to the appeal proceedings as of right has not submitted any comments or requests.
- VI. In preparation for oral proceedings the board issued a communication pursuant to Article 15(1) RPBA setting out its provisional opinion on the relevant issues. Oral proceedings were duly held on 12 February 2025 in the presence of the proprietor and opponent 2 as appellants. With their letter of 29 January 2025, respondent opponent 1 informed the board that they would not attend the oral proceedings.
- VII. Independent claim 1 of the Main Request (patent as granted) reads as follows:
- "An oral pouched snuff product comprising a filling material and a saliva-permeable pouch enclosing the filling material,  
the pouch comprising a nonwoven, the nonwoven comprising staple fibres of regenerated cellulose and a binder,  
the staple fibres of regenerated cellulose comprising lyocell staple fibres,  
characterized in that  
the nonwoven is a carded dry-laid nonwoven consisting of a single web-layer;  
the nonwoven has a main fibre orientation, and  
the dry-laid nonwoven has a basis weight of at most 25 g/m<sup>2</sup>, such as within the range of from 20 g/m<sup>2</sup> to 25 g/m<sup>2</sup> or from 20 g/m<sup>2</sup> to 23 g/m<sup>2</sup>."
- VIII. The releveant submissions of the parties will be discussed in detail in the reasons for the decision.

## Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*

With reference to their written submissions, appellant opponent 2 considers the subject-matter of claim 1 of the Main Request (patent as granted) to lack novelty over the disclosure of each of the documents D11, D28 and D29.

- 2.1 In its communication, the board was of the preliminary opinion that these lines of attack are not convincing. The board presented the following preliminary view (see paragraph 4 of the communication):

*"The subject-matter of independent claim 1 of the Main Request seems to be novel:*

*4.1 Document D11 discloses a pouch (paragraphs 0017 and 0059) comprising a single layer (paragraph 0040) thermobonded nonwoven made from polylactic acid fibres (paragraph 0017) . Regenerated cellulose fibres in the form of Lyocell fibres may be blended into the polylactic acid fibres (paragraph 0058). However, carding seems to be disclosed only for multi-layer configurations (paragraphs 0048, 0070) or for fibre blends without lyocell (paragraphs 0066-0070). Further, a fabric weight of 20 g/m<sup>2</sup> seems to be disclosed only in the context of a multi-layer configuration (paragraphs 0068 and 0069: "The production line was ... with 3 carding machines") and/or without lyocell (paragraph 0082).*

4.2 In their grounds of appeal, the proprietor asserts that the feature "binder" in claim I is restricted to chemical or adhesion bonding, while the disclosure of PLA fibres in D11 relates to the alternative method of thermo-bonding. The board presently does not share this view, since paragraphs 0017 to 0020 of D11 describe the PLA fibres as self-bonding, i.e. the PLA fibres seem to act as a binder. This seems to be confirmed by the proprietor's reference to page 7 of D39 ("thermoplastic properties of certain synthetic fibres to ... perform the binding function"), and also by document D42 (page 5, binder: "high polymer in solid form (...fibre)"; page 6, binder fibre, notwithstanding its contested admission).

4.3 However - the contentious disclosure of a binder in D11 notwithstanding - there seem to be additional differences:

4.3.1 Contrary to opponent 2's argument, the board is presently not convinced that paragraphs 0017 of the "Summary" and paragraphs 0058 or 0080 of the "Detailed description" can be combined into a single embodiment. Even if, paragraph 0058 is directed to coffee and tea bags, which appears contradictory to the tobacco pouch of paragraph 0080. Further, it appears that opponent 2 only refers to paragraph 0085 of D11 for features 1.8 and 1.11, i.e. that the nonwoven is a carded nonwoven having a main fibre orientation. However, the plurality of carding machines mentioned in that paragraph seem to imply that the nonwoven comprises a plurality of weblayers, see also paragraph 0070.

4.3.2 The embodiment in figure 2a contains 100% of a "Layer A" material, which according to paragraph 0046 only comprises polylactic acid ("PLA"), but not lyocell.

4.3.3 Claims 1-16 are directed to a plurality of fibre layers (claim 1) and only seem to disclose a wide range of specific weight of from 10 to 125 g/m<sup>2</sup> (claim 5).

4.3.4 In the absence of a feature directed to the number of layers in claims 17 to 40, the board wonders whether the nonwoven material according to these claims consists of a single layer. In addition to that, that nonwoven has a specific weight of from 8 to 50 g/m<sup>2</sup> (claim 24).

4.4 Document D28 discloses an oral pouched product comprising a carded, dry-laid nonwoven (page 12, lines 33-35) with staple fibres of viscose, see claim 1. According to the board's preliminary view, the disclosure on page 15, lines 11-13 implies that the nonwoven has a main fibre orientation. However, lyocell staple fibres are only mentioned in the background section, see page 2, line 15 of the document. This view is not altered by the reference to the company "Lenzing AG" on page 11, lines 7-8, since none of the cited documents discloses that this company only produces lyocell fibres. The board is presently of the opinion that a skilled person can distinguish lyocell/Tencel fibres from viscose/rayon fibres, see e.g. D2 (pages 38-40) or D19 (page 80: "improved fiber properties"; table 4.1).

4.5 Document D29 discloses an oral pouched tobacco product comprising a nonwoven with cellulosic fibres and heat sealable binder fibres (page 3, lines 5-11). However, it appears that the following properties of the nonwoven belong to separate embodiments ("In some embodiments, ...") which would need to be combined by a plurality of selections:

- Tencel staple fibres (page 21, line 31 in combination with page 22, lines 11 and 12; notwithstanding the proprietor's objection that Tencel is not synonymous with lyocell fibres),
- a nonwoven made by carding and dry-laying and having a main fibre orientation (page 22, lines 32-34),
- a non-woven consisting of a single web-layer (page 24, line 36),
- a basis weight of the nonwoven of 20 gm/m<sup>2</sup> (page 24, line 21).

The board concurs with opponent 2 that regenerated cellulose fibres are presented as particularly advantageous on page 22, line 3 of D29. However, this rather seems to confirm that a (particularly advantageous) selection must be made to arrive at these fibres. In that respect, the case at hand seems to differ from T 0524/17 (where "in one embodiment" was used) in that the expression "in some embodiments" (D29, page 24, lines 20, 21, 35) leaves room for other embodiments in which the nonwoven does not have the properties following that expression."

2.2 As appellant opponent 2 refrained from further comment, the board, after having reconsidered all the legal and factual aspects of the case, confirms its provisional view and thus finds that the subject-matter of claim 1 of the Main Request is novel over the disclosure of each of these documents, Articles 100(a) and 54 EPC.

3. *Remittal to the opposition division*

The appellant proprietor requests remittal to the opposition division for examination of inventive step of the Main Request for the sole reason that this ground of opposition had not been considered at first instance for that request.

According to Article 11 RPBA, the board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. The boards should not normally remit a case if it can decide all the issues without undue burden, see CLBA, 10th edition 2022, V.A.9.1.2. In the present case the board does not see any undue burden for deciding on the complete case also considering that both parties have extensively expressed themselves on all the relevant points of dispute. Also the fact that the division decided inventive step of Auxiliary Request 1 speaks against remittal.

The board therefore decided to exercise the power within the competence of the opposition division and to examine the ground for opposition of lack of inventive step for the Main Request, Article 111(1) EPC. The request for remittal is rejected.

4. *Inventive step*

The opponent 2 as appellant challenges inventive step of claim 1 of the Main Request starting from each of documents D1, D11 and D12. At the oral proceedings before the board they indicated not to have any further inventive step attacks.

- 4.1 The board concurs with the parties that **documents D1 and D12** each constitute a suitable starting point for the assessment of inventive step, since these documents disclose nonwoven pouches for oral pouched snuff products (D1, claim 1: "Oraltabakpackung ... Beutelchen (3) aus einem Vliesstoff"; D12, claim 1: "a fleece for a smokeless tobacco pouch"). It is common ground that these documents do not disclose a basis weight of the nonwoven.
- 4.2 Leaving aside the question what technical effect a basis weight of at most 25 g/m<sup>2</sup> might have and how the objective technical problem might then be formulated, the board finds that the disclosure in combination documents D2 or D38 (each combined by appellant opponent 2 with D1 or D12 as starting points) or in combination document D11 (only combined with D1 as starting point) is such that such a modification would not be obvious. The reasons are the following:
- 4.2.1 Combination **document D2** discloses Tencel nonwoven materials which are made from regenerated cellulose comprising lyocell staple fibres, see the last paragraph of the right column on page 37. In the context of a Tencel nonwoven bonded by spunlacing, the document states that basis weight reductions can be achieved, either to generate cost savings, or to reach new markets such as thin, permeable coverstocks, see the bridging paragraph between pages 39 and 40. That paragraph explicitly discloses a basis weight below 20 gm/m<sup>2</sup> or 10 gm/m<sup>2</sup> for some latex bonded structures. These values are below the upper limit for the basis weight according to claim 1 of the Main Request, and thus, it can be argued that the skilled person could have arrived at an oral pouched snuff product wherein

the pouch comprises a Tencel nonwoven, i.e. comprising lyocell fibres, having a basis weight of at most 25 g/m<sup>2</sup>. However, the board is not convinced that they would have done so in the light of the areas of application of the Tencel nonwoven mentioned in D2. In the absence of any counter-argument by the appellant opponent 2, the board concurs with the appellant proprietor that the term coverstock in D2 refers to the top ply of a female hygiene product or a diaper. None of these products are suitably sized to be placed in the human mouth cavity. In addition to that, such coverstock is not used by itself in a female hygiene product or diaper - unlike a pouch for smokeless tobacco - but only in conjunction with further layers such as the absorbent core. Also the alternative applications in filters and wipes, see the last paragraph in the left column on page 37 of document D2, do not relate to nonwovens which are placed in the human mouth cavity. Even if it were to be assumed that the skilled person, because of their knowledge of nonwovens and their manufacturing techniques, might have been familiar with the contents of document D2, the board believes that it is beyond their normal skills to abstract and transfer those techniques and the resulting material properties such as the basis weight of the nonwoven to a new field of application. This might have been so if document D2 had taught that Tencel fibre nonwovens are generally equivalent to, and exchangeable with nonwovens used in smokeless tobacco products, e.g. those used in D1. As that is not the case, the skilled person would need to recognize that the Tencel nonwoven used for filters, wipes and hygiene products can be applied elsewhere and would be suitable in particular for making pouches of smokeless tobacco products. In the board's view this goes well beyond their limited skills of abstraction.

4.2.2 With regard to combination **document D11**, the appellant opponent 2 referred to paragraphs 0006, 0026 and 0068 of the document. In the board's view, none of these passages are relevant. Paragraph 0006 does not mention nonwovens comprising lyocell fibres, and only discloses that the porosity of cellulosic "paper" products goes to zero when cellulosic paper gets higher than 30 g/m<sup>2</sup> in weight. This generic statement does not disclose directly and unambiguously that the nonwoven has a basis weight of at most 25 g/m<sup>2</sup>. Paragraph 0026 (notwithstanding the contested admissibility of appellant opponent 2's reference to that paragraph presented for the first time during oral proceedings before the board) also does not mention nonwovens comprising lyocell fibres, and due to the term "the invention", at most refers to nonwovens comprising synthetic cellulosic fibres blended with proprietary polylactic acid (hereafter: PLA) fibres according to the invention defined in paragraph 0017 of document D11. While paragraph 0068 discloses fabric weights varied between 12 and 20 g/m<sup>2</sup>, this disclosure is in the context of the preferred embodiment according to paragraphs 0064 and 66 where the nonwoven includes all of its fibres in bi-component form with a mixture of mono-component PLA fibres bended with core/sheath bi-component fibres with PLA in the core and Co-PLA in the sheath, see paragraph 0064 and the percentages in paragraph 0066.

4.2.3 Combination **document D38** is directed to a lined tobacco pouch. The pouch material comprises a web constructed from cellulose fibres, see column 2, lines 64 and 65, and the web has a basis weight of about 5 to about 25 g/m<sup>2</sup>, see column 3, line 11. By providing a multilayered liner, the functionality of the liner can be enhanced compared to that of a single layer liner, see the sentence bridging columns 4 and 5. If the liner

is coated on the web, multiple coatings can be applied to provide a total coating weight such as 10 to 200 mg, for example, 45 mg per pouched tobacco product, see column 5, lines 51 to 60. Notwithstanding the issue whether such a coated web is consisting of a single web-layer, as stipulated by claim 1 of the Main Request, the board is not convinced that document D38 will incite the skilled person to provide a basis weight of at most  $25 \text{ g/m}^2$ , as argued by appellant opponent 2 in paragraph 9.5.6.3 of their grounds of appeal or in paragraph 3.4.15 of their reply of 11 August 2023. The reason is that the upper limit of  $25 \text{ g/m}^2$  in column 3, line 11 of D38 leads to a higher basis weight of the coated web for the following reasons. In the absence of any counter-argument by the appellant opponent 2, the board concurs with the appellant proprietor that the weight of a pouch made from a nonwoven with a basis weight of  $25 \text{ g/m}^2$  is 24.5 mg, see the third paragraph on page 3 of their letter of 12 December 2024. Even if the skilled person would provide only a single one of the five coated layers to that web, see column 5, lines 51 to 60 of D38, the weight of the coating in the specific example of 45 mg per pouched product leads to an additional weight of 9 mg per coated layer. That weight corresponds to about 35% of the weight of the exemplary pouch. As a consequence, this translates into a corresponding increase of the basis weight of the coated nonwoven web. The appellant opponent 2 did not argue that the skilled person would modify the teaching of document D38, and the board also does not see any obvious reason for them to do so. Therefore, a straightforward combination of the nonwoven described in document D1 and the value of  $25 \text{ g/m}^2$  in column 3, line 11 of document D38 does not lead to a basis weight of at most  $25 \text{ g/m}^2$  according to claim 1 of the Main Request.

4.3 With regard to the alternative starting point **document D11** the appellant opponent 2 referred during the oral proceedings before the board to their written submissions. Their grounds of appeal of 4 April 2023 and their reply of 16 January 2024 had been received before the board issued its communication, and thus, were considered by the board when it drafted its communication. In this communication, the board was of the preliminary opinion that this objection is not convincing. The board presented the following preliminary view (see paragraphs 6.3 and 4.3 of the communication):

*"6.3 The objection starting from document D11/D30 has not convinced the board:*

*Opponent 2 argues that the document teaches each of the features of claim 1, and thus, the claim cannot be considered inventive based on the teachings of D11 document taken alone. For the reasons given under novelty, see paragraph 4.3 of the present communication, the board is presently not convinced that the passages of D11 cited by opponent 2 can be combined into a single embodiment."*

Paragraph 6.3 of the communication contains a reference to paragraph 4.3. This paragraph reads as follows:

*"4.3 However - the contentious disclosure of a binder in D11 notwithstanding - there seem to be additional differences:*

*4.3.1 Contrary to opponent 2's argument, the board is presently not convinced that paragraphs 0017 of the "Summary" and paragraphs 0058 or 0080 of the "Detailed description" can be combined into a single embodiment.*

*Even if, paragraph 0058 is directed to coffee and tea bags, which appears contradictory to the tobacco pouch of paragraph 0080. Further, it appears that opponent 2 only refers to paragraph 0085 of D11 for features 1.8 and 1.11, i.e. that the nonwoven is a carded nonwoven having a main fibre orientation. However, the plurality of carding machines mentioned in that paragraph seem to imply that the nonwoven comprises a plurality of weblayers, see also paragraph 0070.*

*4.3.2 The embodiment in figure 2a contains 100% of a "Layer A" material, which according to paragraph 0046 only comprises polylactic acid ("PLA"), but not lyocell.*

*4.3.3 Claims 1-16 are directed to a plurality of fibre layers (claim 1) and only seem to disclose a wide range of specific weight of from 10 to 125 g/m<sup>2</sup> (claim 5).*

*4.3.4 In the absence of a feature directed to the number of layers in claims 17 to 40, the board wonders whether the nonwoven material according to these claims consists of a single layer. In addition to that, that nonwoven has a specific weight of from 8 to 50 g/m<sup>2</sup> (claim 24)."*

As the appellant opponent 2 refrained from further comment, the board, after having reconsidered all the factual and legal aspects of the case, confirms its provisional opinion that the objection is not convincing.

4.4 From the above it follows that a skilled person will not arrive at the subject-matter of claim 1 starting from each of D1, D11 or D12 in an obvious manner. Therefore, claim 1 of the Main Request involves an inventive step in the light of this prior art, Articles 100(a) and 56 EPC.

5. *Amendments*

The appellant opponent 2 disputes the decision's finding that there is no added subject-matter in the Main Request, see paragraph 9 of the impugned decision.

5.1 During the oral proceedings before the board, the appellant opponent 2 referred to their written submissions. Their grounds of appeal of 4 April 2023 and their reply of 16 January 2024 had been received before the board issued its communication, and thus, were considered by the board when it drafted its communication. In this communication, the board was of the preliminary opinion that this objection is not convincing. The board presented the following preliminary view (see paragraph 2 of the communication):

*"The board is of the preliminary view that claim 13 of the Main Request is based on an allowable combination of original claims 1-3 and features from page 6, lines 2 ("carded") and 23 to 25 ("within the range of from 30 to 45% by weight of the binder") of the general part of the originally filed description. In the board's view, the expression "as disclosed herein" in lines 2 and 23 may be understood in the sense that these features may be combined with any other passage relating to the drylaid nonwoven, and thus, with all original claims."*

5.2 As the appellant opponent 2 refrained from further comment, the board, after having reconsidered all the legal and factual aspects of the case, confirms its provisional opinion that the objection is not convincing. In conclusion, the board finds that the decision was right to hold that claim 13 of the Main Request does not contain subject-matter which extends beyond the application as filed, Articles 100(c) and 123(2) EPC.

6. *Sufficiency of disclosure*

The appellant opponent 2 disputes the decision's finding that the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person, see paragraph 10 of the impugned decision.

6.1 During the oral proceedings before the board, the appellant opponent 2 referred to their written submissions. Their grounds of appeal of 4 April 2023 and their reply of 16 January 2024 had been received before the board issued its communication, and thus, were considered by the board when it drafted its communication. In this communication, the board was of the preliminary opinion that this objection is not convincing. The board presented the following preliminary view (see paragraph 3 of the communication):

*"The invention according to the Main Request seems to be sufficiently disclosed:*

*3.1 Single web-layer:*

*Claim 1 of the Main Request is directed to a nonwoven consisting of a single-layer. Whether or not the patent*

*provides any disclosure of how to prepare a pouch that includes only a single layer without overlapping seams therefore seems to be immaterial for assessing sufficiency of the claimed invention. That notwithstanding, the board construes claim 1 in the sense that a pouch implies at least one seam for joining two nonwoven layers, which are stacked separate sheets or folded in an overlapping manner from a single sheet.*

*3.2 Main fibre orientation - carding direction:*

*Claim 1 of the Main Request is directed to a carded nonwoven having a main fibre orientation. In the board's preliminary view, the presence or absence of a main fibre orientation can be identified on a nonwoven, particularly since the parties have not provided any evidence to the contrary. Whether that main fibre orientation coincides with the carding direction, i.e. is a result of a previous manufacturing step for obtaining the nonwoven, or whether a skilled person knows how to make a carded web having a main fibre orientation other than the machine direction seem to be irrelevant for a product claim.*

*3.3 Dry heat seal strength of the nonwoven material:*

*The board is not convinced by opponent 2's argument that no seam is present in the nonwoven according to claim 10. That claim is directed to a pouched product, and a pouch seems to imply at least one seam for joining two layers of the nonwoven, see above."*

- 6.2 As the appellant opponent 2 refrained from further comment, the board , after having reconsidered all the legal and factual aspects of the case, confirms its provisional opinion that the objection is not convincing. In conclusion, the board finds that the

decision was right to hold that the patent discloses the invention defined in claim 1 of the Main Request in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Articles 100(b) and 83 EPC.

7. In conclusion, the board finds that the decision was right to hold that the patent discloses the invention defined in the Main Request (patent as granted) in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Articles 100(b) and 83 EPC, and that claim 13 of the Main Request does not contain subject-matter which extends beyond the application as filed, Articles 100(c) and 123(2) EPC.

However, contrary to the opposition division's findings, the board considers the subject-matter of claim 1 of the Main Request novel and involving an inventive step in the light of the cited prior art, Articles 100 (a), 54 and 56 EPC. Hence, the impugned decision must be set aside.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated