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**Datasheet for the decision
of 26 November 2025**

Case Number: T 0645/23 - 3.5.01

Application Number: 18159788.1

Publication Number: 3357356

IPC: A24F47/00, A61M11/04

Language of the proceedings: EN

Title of invention:
ELECTRONIC VAPOUR PROVISION DEVICE

Patent Proprietor:
Nicoventures Trading Limited

Opponents:
Philip Morris Products S.A.
Behrends, Frederik
Weickmann & Weickmann PartmbB

Headword:
Vapour provision device/NICOVENTURES

Relevant legal provisions:
EPC Art. 111(1), 113
EPC R. 103(1)(a), 111(2)
RPBA 2020 Art. 11

Keyword:

Appeal decision - remittal to the department of first instance
(yes - insufficient reasoning and violation of the right to be
heard)

Reimbursement of appeal fee - (yes)



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0645/23 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 26 November 2025

Appellant: Nicoventures Trading Limited
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 January 2023
revoking European patent No. 3357356 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman A. Wahrenberg
Members: L. Falò
 L. Basterreix

Summary of Facts and Submissions

- I. The appeal was filed by the patent proprietor against the decision of the opposition division to revoke European patent No. EP 3 357 356, a divisional of European patent application No. 13722454.9.
- II. The opposition division found that the main request and the third auxiliary request included subject-matter extending beyond the content of the parent application as filed (Article 76(1) EPC), that claims 1 and 12 of the first auxiliary request lacked novelty over D6, i.e. WO 2011/157561, and that claims 1 and 11 of the second auxiliary request lacked novelty over D8, i.e. US 5894841.
- III. The patent proprietor (appellant) requested that the patent be maintained as granted or according to one of the first to seventeenth auxiliary requests filed with the statement of grounds of appeal. Oral proceedings were requested if the board did not intend to maintain the patent as granted.
- IV. The first and third opponents (respondents) requested that the appeal be dismissed and, as an auxiliary measure, they requested oral proceedings.
- V. In its communication accompanying the summons to oral proceedings, the board informed the parties that it was of the opinion that a substantial procedural violation had occurred and that it was therefore minded to remit the case to the opposition division for further prosecution and to order the reimbursement of the appeal fee.

VI. In reply to the summons, the second opponent announced that they would not be attending the oral proceedings. All the parties which had requested oral proceedings (the patent proprietor and the first and third opponents) withdrew their requests for oral proceedings on the condition that the board confirmed its preliminary opinion and remitted the case to the opposition division. Accordingly, the oral proceedings were cancelled.

Reasons for the Decision

Substantial procedural violation

1. During the opposition proceedings, the patent proprietor filed a main request (the patent as granted) and seventeen auxiliary requests: pending auxiliary requests 4 to 17 were filed on 6 October 2022 as auxiliary requests 4 to 14 and auxiliary requests 1 to 3; and pending auxiliary requests 1 to 3 were filed during the oral proceedings before the opposition division.
2. There is no indication in the decision or in the minutes of the oral proceedings that any of those requests was subsequently withdrawn by the proprietor or held inadmissible by the opposition division. All the requests on file were confirmed by the proprietor at the end of the oral proceedings (see the minutes, point 23.1).
3. At the end of the opposition proceedings, the opposition division decided to revoke the patent. The decision, however, only deals with the main request and auxiliary requests 1 to 3, and indeed these are the

requests indicated as the basis for the decision in the section entitled "Summary of facts and submissions", point 13.

4. The decision does not explain whether, or why, the remaining requests (i.e. auxiliary requests 4 to 17) were considered to be unallowable or inadmissible. In particular, the following sentence in point 20 of the decision cannot be interpreted as a decision on auxiliary requests 4 to 17 that follows from the conclusions reached with respect to the higher-ranking requests.

"Since the proprietor filed during the written procedure fourteen auxiliary requests and during the oral proceedings he had the opportunity to file further three auxiliary requests, the opposition division concluded, that the proprietor had a reasonable number of opportunities to file a successful auxiliary request, overcoming the raised grounds of opposition."

5. The minutes do not mention a discussion of auxiliary requests 4 to 17 during the oral proceedings.
6. At least auxiliary request 10 appears to overcome the opposition division's objections under Article 76(1) EPC in respect of the main request. This request also appears to address the Article 76(1) EPC objection raised with respect to auxiliary request 3. Furthermore, claim 1 of auxiliary request 10 includes additional features which are not considered in the decision and would have had to be assessed for the first time on appeal.

7. For these reasons, the board judges that the decision is not sufficiently reasoned and does not meet the requirements of Rule 111(2) EPC.
8. Furthermore, since the decision does not deal with the appellant's arguments in respect of auxiliary requests 4 to 17, the board also judges that the appellant's right to be heard has been violated (Article 113 EPC). The right to be heard under Article 113(1) EPC requires that the parties be given an opportunity not only to present comments but also to have those comments considered, i.e. reviewed with respect to their relevance for the decision on the matter.
9. These constitute substantial procedural violations which justify the remittal of the case (Article 111(1) EPC, Article 11 RPBA) and the reimbursement of the appeal fee (Rule 103(1)(a) EPC).

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 for further prosecution.
3. The appeal fee shall be reimbursed.

The Registrar:

The Chair:



T. Buschek

A. Wahrenberg

Decision electronically authenticated