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**Datasheet for the decision  
of 6 October 2025**

**Case Number:** T 0941/23 - 3.2.04

**Application Number:** 16819849.7

**Publication Number:** 3399876

**IPC:** A24F47/00

**Language of the proceedings:** EN

**Title of invention:**

AEROSOL-GENERATING DEVICE WITH SEALED COMPARTMENT

**Patent Proprietor:**

Philip Morris Products S.A.

**Opponent:**

Nicoventures Trading Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 83, 56

RPBA 2020 Art. 12(6)

**Keyword:**

Sufficiency of disclosure - (yes)

Inventive step - (yes)

Late-filed objection - should have been submitted in first-  
instance proceedings (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0941/23 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 6 October 2025**

**Appellant:** Philip Morris Products S.A.  
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**Appellant:** Nicoventures Trading Limited  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
10 March 2023 concerning maintenance of the  
European Patent No. 3399876 in amended form.**

**Composition of the Board:**

**Chairman** A. Pieracci  
**Members:** G. Martin Gonzalez  
K. Kerber-Zubrzycka

## **Summary of Facts and Submissions**

- I. The opponent appeals the interlocutory decision of the opposition division to maintain the patent in amended form according to auxiliary request 3 before it (auxiliary request 7 in appeal).

The proprietor withdrew their appeal during oral proceedings before the Board.

- II. The opposition division held inter alia that claim 1 of auxiliary request 3 (auxiliary request 7 in appeal) was sufficiently disclosed, new and involved an inventive step and maintained the patent accordingly. They also admitted late filed document D11.

- III. In preparation for oral proceedings the Board issued a first written communication, dated 13 January 2025, setting out its provisional opinion on the relevant issues.

Oral proceedings before the Board were held by videoconference on 3 June 2025. The Board decided to close the oral proceedings without a final decision in view of the referral G1/24, pending before the Enlarged Board of Appeal, and to continue the proceedings in writing.

In preparation for further oral proceedings the Board issued, on 7 July 2025, a second written communication setting out its provisional opinion on the pending relevant issues.

Oral proceedings before the Board were held by videoconference on 6 October 2025.

- IV. The appellant opponent requests that the decision under appeal be set aside and the patent revoked in its entirety.

The withdrawal of the patent proprietor's appeal at the end of the oral proceedings is interpreted by the Board, at least for the present case, as implying a request of dismissal of the opponent's appeal as main request (auxiliary request 7 of the grounds of appeal).

- V. Independent claim 1 as maintained by the opposition division (main request after withdrawal of the proprietor's appeal, auxiliary request 7 in the grounds appeal, auxiliary request 3 in the opposition division's decision) reads as follows:

"An aerosol-generating device (12) comprising:  
a housing (14) defining at least one internal compartment (16), wherein the housing (14) is waterproof;  
a power supply (18) positioned within the at least one internal compartment (16);  
an electric heater (32) positioned within the at least one internal compartment (16), the electric heater (32) being an inductive heater; and  
a haptic feedback device (26) positioned within the at least one internal compartment (16),  
wherein the aerosol-generating device (12) defines a cavity (34) for receiving an aerosol-generating article (40, 102, 202) and at least a portion of the at least one internal compartment (16) circumscribes at least a portion of the cavity (34),  
and wherein the electric heater (32) circumscribes at least a portion of the cavity (34)."

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

- (D2) WO 2013/025921 A1
- (D3) CN 203646510 U
- (D3a) Machine translation of D3
- (D4) WO 2009/127401 A1
- (D8) US 2015/0020825 A1
- (D11) WO 2015/177257 A1

VII. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision.

### **Reasons for the Decision**

#### 1. Background

The invention concerns an electrically operated smoking device with a waterproof housing, see patent specification para 0001. The device includes a power supply, an electric heater, and a haptic feedback device, all positioned within an internal compartment of the waterproof housing to improve reliability by protecting against water damage, see para 0014.

#### 2. Admissibility of arguments and evidence

2.1 The parties re-file, as annexes to their grounds of appeal or reply, their past written submissions to the opposition division, that they wish to maintain in appeal. The Board does not take into account any such unspecific blanket back-references to previous arguments made at first instance, see Case Law of the Boards of Appeal, 11th edition 2025 (CLB), V.A.2.6.5.

2.2 Regarding admissibility of document D11, which is contested by the respondent proprietor, document D11 - as such - is a document on which the appealed decision is based (Article 12(2) RPBA) and resubmitted with the grounds of appeal. It does not represent an amendment to the party's case and the board has no discretionary power to disregard it (see CLB, V.A.3.4.3). Articles 12(4) to (6) RPBA 2020 do not grant such power.

However, with the exception of the inventive step objection starting from D3 in combination with D11 that is part of the appealed decision, the above conclusion is without prejudice to the question of whether or not specific objections based on D11 are admissible for a given request. Admissibility of further objections in this respect is discussed below in the frame of auxiliary request 7 (claims as upheld).

3. Opponent's right to be heard

Contrary to the opponent's submissions, there is no indication in the minutes or the decision that the opposition division limited the discussion concerning document D11, a late filed document admitted by the division during the oral proceedings, to Fig. 3 and two associated paragraphs (spanning pages 23-25) of D11.

Therefore the Board cannot conclude that the opponent's right to be heard has been violated in this respect, Art 113(1) EPC.

4. Main request (claims as upheld) - Sufficiency of disclosure

4.1 While this objection was raised and discussed during the present proceedings in the frame of the claims as

granted (before the proprietor withdrew their appeal), the appellant opponent maintains it also for the upheld claims that were filed as auxiliary request 7 with the grounds of appeal (see opponent's grounds of appeal section 9.2).

4.2 The Board concurs with the opinion of the opposition division that waterproofing techniques, at the level required in the contested patent, are well known and belong to the common general knowledge of the skilled person, so that no further detail in the patent specification is necessary for the skilled person to carry out the teachings of the contested patent without undue burden, Art 100(b) EPC and Art 83 EPC.

4.3 If, as contended by the appellant opponent, an engineer designing electronic aerosol-generating devices lacks expertise in waterproofing, they would delegate the task to a specialist - such as an engineer experienced in general electronic consumer products - where waterproofing is standard practice. A simple reference to IEC Standard 60529 (see patent specification, paragraph 0007) suffices, as implementing waterproofing measures to meet its various levels is routine for such professionals.

5. Main request (claims as upheld) - Inventive step

5.1 The appellant opponent contests the opposition division's conclusion that claim 1 as upheld involves an inventive step starting from document D3 in combination with D11, D8 and D4 (appealed decision section 5.3).

5.2 Document D3 discloses an aerosol-generating device within the meaning of granted claim 1. The device

comprises a two-component housing consisting of a battery rod (Figs. 1 and 2) connected or connectable to an atomiser rod (Figs. 3 and 4). In the embodiment shown in Figures 2 and 3, the battery rod and atomiser rod include waterproof, gas-permeable membranes 12, thereby forming a waterproof housing (see D3a, p. 1, lines 36-54; p. 3, lines 7-21; p. 4, lines 1-9; and Figs. 1-3). This housing encloses a power supply (battery 116) and an electric heater (heating wire 133, see p. 4, line 15).

The appellant opponent, in line with the opposition division's analysis (see contested decision, section 4.3), identifies the oil storage member 132 of D3 (see Fig. 3) as an aerosol-generating article within the meaning of the contested claim. This member is positioned in a cavity between the two waterproof membranes 12 and is therefore surrounded by the internal compartment defined by the device housing and the membranes 12. On that basis, the appellant opponent considers that D3 also discloses the feature of the contested claim requiring a cavity for receiving an aerosol-generating article, where at least a portion of the at least one internal compartment circumscribes at least a portion of the cavity.

5.3 The respondent proprietor disputes that D3 discloses all of the features identified above and contests several of the opposition division's corresponding findings. The Board, however, does not consider it necessary to decide on this point. For the purposes of the following analysis, and in favour of the appellant opponent, the Board proceeds on the assumption that D3 does indeed disclose all of those features.

5.4 Aside from the above considerations and contrary to the opponent's argument, the Board concurs with the opposition division that the device of D3 fails to disclose an inductive heater. The heating wire 133 described in D3 is presented solely as a resistive heater, with no indication that it functions as a susceptor - an element that must possess specific material properties tailored to its intended function. Moreover, a susceptor alone does not constitute an inductive heater. An inductive heater requires both a susceptor and an inductive coil.

Accordingly, the Board holds that D3 does not disclose the claimed feature of an inductive heater, wherein the electric heater circumscribes at least a portion of the cavity.

The opposition division concluded that claim 1 involves an inventive step over D3, taken as the closest prior art, on the basis of this differentiating feature. The Board proceeds to examine this conclusion.

5.5 Starting from D3, the objective technical problem may be formulated, in the least ambitious terms, as providing an alternative heating means to the resistive heating wire of the atomisation assembly 133.

5.6 The Board agrees with the opposition division that, even assuming it would be obvious for the skilled person to replace the resistive heater of D3 with an inductive heating arrangement, it is not apparent how such a modification would be implemented in the specific manner defined in claim 1. Inventive step is to be assessed based on what the skilled person would do, not merely on what they could do.

5.7 In D3, the heater 133 is located within the cavity, in direct thermal contact with the smoke oil contained in the storage member 132. The skilled person seeking to replace this heater with an inductive system would, in accordance with the general principle of maximising electromagnetic coupling efficiency, position the susceptor and the coil as close as possible to each other and to the oil - thus within the cavity rather than around it. Locating the coil outside the cavity, as required by claim 1, would be technically disadvantageous due to reduced coupling efficiency and heating performance, and would not be considered by the skilled person as an obvious modification.

5.8 The appellant opponent relies on document D11 to support the proposed modification. However, as correctly observed by the opposition division and the respondent proprietor, D11 and D3 are based on fundamentally different technical concepts. In D11, the inductive heating arrangement is configured to heat a susceptor located internally within an aerosol-forming article (smoking article 2), which is a consumable separate from, and attachable to, a reusable device 1 (see Fig. 3). The inductor coil L2 is positioned in the reusable device 1, outside the cavity 14 and surrounding it, in order to inductively heat the susceptor within the separate article when connected. This configuration is inherently linked to the concept of heating a detachable aerosol-generating article external to the device.

The skilled person would not apply such an arrangement, intrinsically associated with separable articles, to the integrated design of D3, where the aerosol-forming components are contained within the device itself. Positioning the induction coil outside the cavity in D3

would, as explained above, reduce electromagnetic coupling and heating efficiency compared with the straightforward configuration in which all heating elements are located internally, without offering any compensating technical advantage. The skilled person would therefore have no reason to adopt the configuration of D11 in the context of D3.

The Board also concurs with the findings of the opposition division that the skilled person would not consider it obvious to depart from the integrated device concept disclosed in document D3 and adopt the separable configuration taught by document D11, when merely seeking an alternative to the heater component. Such a departure would entail a major reworking of the device's design - going well beyond what the skilled person would contemplate when addressing the posed technical problem, the identification of a suitable alternative for the heater.

It follows that D11 does not provide any teaching that would lead the skilled person, in an obvious manner, to the configuration defined in claim 1. The subject-matter of claim 1 is therefore not rendered obvious by a combination of D3 with D11.

- 5.9 Nothing more can be derived from the combination with D4, which merely teaches in general terms that inductive heating may serve as an alternative to resistive heating (see page 4, lines 8 and 23-25), or from D8, which is cited only for its disclosure concerning the use of haptic devices in electronic smoking devices (see abstract and paragraphs 0040-0043), a teaching unrelated to the nature or construction of the heater device.

5.10 The appellant opponent also raises inventive step objections starting from D2 or D11 and a novelty objection in view of D11. As indicated in the Board's communication dated 13 January 2025, section 13.2, in this respect,

*"The inventive step objections starting from D2 or D11 and the novelty objection starting from D11 are new in appeal. These objections against subject-matter that was known to the opponent at least two months before the oral proceedings before the opposition division, should have been presented at the latest at that moment (see proprietor's reply 1 of 4 December 2023 sections 21.2 and 22.2). The Board is minded not to admit them, Art 12(6) RPBA."*

The appellant opponent refrained from further comment on this issue. In the absence of any additional submissions, the Board, having reconsidered its preliminary opinion, sees no reason to depart from its initial view and therefore decides not to admit these objections under Article 12(6) RPBA.

5.11 In summary, the inventive step objections raised by the appellant opponent against the conclusions of the opposition division are either not admitted or fail to convince the Board.

6. As the appellant opponent's arguments against the findings of the decision of the opposition division fail to convince the Board, it confirms the decision of the opposition division.

**Order**

**For these reasons it is decided that:**

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated