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**Datasheet for the decision
of 6 March 2026**

Case Number: T 1745/23 - 3.5.01

Application Number: 09732942.9

Publication Number: 2276360

IPC: A24F47/00

Language of the proceedings: EN

Title of invention:

AN ELECTRICALLY HEATED SMOKING SYSTEM

Patent Proprietor:

Philip Morris Products S.A.

Opponents:

JT International S.A.

British-American Tobacco (Investments) Limited

Headword:

Electrically heated smoking system/PHILIP MORRIS

Relevant legal provisions:

EPC Art. 54(2), 56

Keyword:

Inventive step - enabling an electrically heated smoking system only after registration (no - obvious implementation of non-technical requirement)

Decisions cited:

T 0641/00, T 2358/19



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1745/23 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 6 March 2026

Appellant: JT International S.A.
(Opponent 1) 8 rue Kazem Radjavi
1202 Geneva (CH)

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

Appellant: British-American Tobacco (Investments) Limited
(Opponent 2) Globe House,
1 Water Street
London WC2R 3LA (GB)

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

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

Representative: HGF
HGF Limited
4th Floor, 1 City Square
Leeds LS1 2ES (GB)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 August 2023 concerning maintenance of the
European Patent No. 2276360 in amended form.**

Composition of the Board:

Chairman W. Zubrzycki
Members: I. Kürten
 D. Rogers

Summary of Facts and Submissions

- I. Two oppositions were filed against European Patent No. 2276360 in its entirety on the grounds under Articles 100(a), (b) and (c) EPC.
- II. In a first decision, the opposition division revoked the patent on the ground of added subject-matter (Articles 100(c) and 123(2) EPC). This decision was set aside by Board of Appeal 3.2.01 in decision T 2358/19, and the case was remitted to the opposition division for further prosecution.
- III. Following resumption, the opposition division decided to maintain the patent in amended form based on auxiliary request 1 filed on 4 April 2018. The present case concerns the appeals filed by opponent 1 and opponent 2 against this interlocutory decision.
- IV. In their statements setting out the grounds of appeal, the opponents (appellants) requested that the decision of the opposition division be set aside and that the patent be revoked in full.

In its reply to the appeals, the patent proprietor (respondent) requested, as its main request, that the appeals be dismissed and that the patent be maintained based on the claims held allowable by the opposition division (then auxiliary request 1). Alternatively, it requested maintenance of the patent on the basis of auxiliary requests 1 or 2, filed with the reply and corresponding to the third and sixth auxiliary requests filed during the opposition proceedings.

- V. The parties were summoned to oral proceedings. In the accompanying communication, the Board set out its preliminary opinion that, *inter alia*, claim 1 of all three requests did not involve an inventive step (Article 56 EPC) over D6 (US 2007/0045288 A1).
- VI. Oral proceedings before the Board took place by videoconference on 6 March 2026. At the end of the oral proceedings, the parties confirmed their initial requests. After deliberation, the Chairman announced the Board's decision.
- VII. Claim 1 of the proprietor's main request reads as follows (with feature labelling as in point 2 of the decision under appeal):
- 1.1 An electrically heated smoking system (101) for receiving an aerosol forming substrate, the system comprising:
 - 1.2 at least one heating element for heating the substrate to form an aerosol;
 - 1.3 a power supply for supplying power to the at least one heating element;
 - 1.4 electrical hardware connected to the power supply and the at least one heating element; characterised in that the system further comprises:
 - 1.5 an interface (105) configured to establish a communications link to upload data to and download data from an Internet-enabled host (109), and
 - 1.6 wherein the electrical hardware is programmable by software downloadable from the Internet-enabled host via the communications link and
 - 1.7 wherein the system is only enabled after registration with an Internet application on

the Internet enabled host via the communications link.

- VIII. Claim 1 of auxiliary request 1 is identical to claim 1 of the main request.
- IX. In claim 1 of auxiliary request 2, feature 1.7 has been amended as follows (addition underlined):
- 1.7 wherein the system, as a security feature, is only enabled after registration with an Internet application on the Internet enabled host via the communications link.
- X. Insofar as relevant for the decision, the arguments of the parties are discussed below.

Reasons for the Decision

Background

1. The invention concerns an electrically heated smoking system that holds an aerosol-forming substrate and heats it in order to produce an inhalable aerosol ([0001] of the B1 publication).

Looking at Figure 1, the smoking system 101 includes an interface 105, such as an USB socket, which can establish a communication link to an Internet-enabled host 109, such as a personal computer, for uploading and downloading data. This connection also allows software to be downloaded from the host to program the system's electronic hardware. Furthermore, the smoking

system is enabled only after registration via an Internet application on the host ([0045] to [0051]).

In decision T 2358/19 (see section II. above), the competent Board interpreted the phrase "*the system is only enabled*" in feature 1.7 as meaning that the electrically heated smoking system as a whole can be used only after it has been registered, see reasons, point 2.2.1.

Main request, claim 1 - Novelty

2. The Board agrees with the appealed decision (point 2.5) that claim 1 is new over D6 (Article 54(2) EPC), feature 1.7 being the only distinguishing feature.
3. The proprietor argued that claim 1 also differed by feature 1.6. In its view, paragraph [0070] of D6 disclosed only the remote entry of device parameters for use with software already installed on the volatilising device (corresponding to the "electrically heated smoking system" in claim 1). It did not disclose the downloading of software instructions to the device.

However, paragraph [0070] of D6 states that "*programming the controls of the volatilizing device 100 may be performed externally and/or communicated to the controller for standalone operation*". The Board concurs with opponent 2 that the phrase "programming [of] the controls" refers to software instructions. Accordingly, in the second alternative, this passage relates to the transmission of software instructions from the host to the device for execution thereon.

4. Regarding feature 1.7, the opponents relied on paragraph [0039] of D6, which mentions entering a

username or password, which, in their view, implies a form of registration.

Opponent 1 argued that the entry of these data served to prevent accidental activation of the device and therefore implied that the device was enabled only after such registration. Opponent 2 submitted that paragraph [0039], when read together with the second alternative mentioned in paragraph [0070], implied that software enabling standalone operation of the device could be downloaded only after the required credentials had been entered. Since the device could operate in the standalone mode only after this software had been downloaded, this meant that operation of the device was conditional on the provision of the user's credentials.

According to the opponents, D6 therefore effectively disclosed that registration was a prerequisite for enabling the device via a communication link, thereby anticipating feature 1.7.

The Board, however, agrees with the opposition division (decision, point 2.5.1) and the proprietor that even if entering a username or password to control the device were regarded as implying a form of registration, D6 still does not suggest that such registration is necessary to enable the device as a whole. It is at most derivable that this implicit "registration" might allow for user-specific settings, e.g. by overriding default parameters with custom ones.

Thus, D6 does not clearly and unambiguously disclose that the device *as a whole* can be used only after registration, as required by the interpretation of feature 1.7 in T 2358/19. Therefore, the Board finds that this feature is novel over D6.

Main request, claim 1 - Inventive step

5. Contrary to the decision under appeal and in agreement with the opponents, the Board considers that claim 1 lacks an inventive step (Article 56 EPC) in view of D6 and the skilled person's common general knowledge.
6. The Board concurs with opponent 1 that the feature of enabling the smoking system only after registration does not contribute to the technical character of the invention.
7. Essentially in line with the opposition division's reasoning (decision, point 2.8.2), the proprietor referred to T 2358/19 and argued that, according to the reasons for that decision, enabling the smoking system only after registration constituted a "security feature" intended to prevent unauthorised use of the smoking system. This effect conferred technical character upon feature 1.7.

The proprietor also submitted that claim 1, being a device claim, had technical character as a whole and that enabling the smoking system upon registration resulted in a material change within the system, namely a transition from a disabled state to an enabled state.

8. The Board is not persuaded by these arguments.

Feature 1.7 merely requires that the system is enabled after registration, i.e. after the entry of some user or device data. As the opponents pointed out, simply entering data, without any verification or evaluation, does not prevent unauthorised use. Under the broad wording of the claim, any user - whether authorised or

not - could enter some data and activate the smoking system. The alleged prevention of unauthorised use is thus speculative and cannot confer technical character upon feature 1.7.

Rather, the Board agrees with opponent 1 that the idea of enabling the smoking system only after registration is not necessarily motivated by technical reasons, but may equally be motivated by non-technical business or administrative considerations. In fact, the latter interpretation is consistent with paragraph [0052] of the patent, which refers to business-related applications of user or device registration, such as "pay-as-you-smoke" billing or personalised recommendations of smoking articles.

Furthermore, the Board concurs with the proprietor that claim 1, as a device claim, has technical character as a whole and therefore constitutes an invention within the meaning of Article 52(1) EPC. However, this does not mean that every claimed feature contributes to this technical character. Feature 1.7 contributes to the technical character only insofar as it implies that the smoking system is enabled via the communication link. By contrast, as set out above, the concept of enabling the system only after registration reflects a non-technical requirement. The fact that implementing this requirement in the smoking system entails a change in its operational state does not alter the non-technical nature of the requirement.

9. According to the approach established in T 641/00 (*Two identities/COMVIK*), non-technical requirements may be incorporated into the formulation of the objective technical problem as constraints to be met.

In the present case, the objective technical problem can therefore be formulated as *how to adapt the device of D6 to meet the requirement that it is only enabled as a whole, i.e. can be used for smoking, after registration.*

10. The Board agrees with the opponents that the solution in claim 1 is obvious.

As noted by opponent 1, the fact that registration is with an "internet application" on an "internet-enabled" host concerns the functionality of the host, which lies outside the scope of claim 1. These aspects therefore cannot limit the claimed smoking system and are irrelevant to the assessment of inventive step.

As regards the technical implementation of the enablement, D6 already discloses that the volatilising device can be remotely controlled from the host via a communication link ([0070], [0071]). Thus, it would have been an obvious option for the skilled person to also control the device's enablement via the same communication link.

It should be noted that claim 1 (and the patent as a whole) does not explain how the enablement of the device is technically realised. It must therefore be assumed that it is implemented using conventional techniques within the skilled person's common general knowledge.

11. Accordingly, claim 1 of the main request does not involve an inventive step (Article 56 EPC).

Auxiliary request 1 - Inventive step

12. This request differs from the main request only in that independent method claim 13 has been deleted. Claim 1 is identical to that of the main request. Accordingly, it lacks an inventive step (Article 56 EPC) for the same reasons.

Auxiliary request 2 - Inventive step

13. Claim 1 of this request adds to distinguishing feature 1.7 that enabling the system after registration with an internet application on the host is "a security feature".

However, the Board considers that the notion of "security" in this context is not limited to technical security, such as protection against device malfunction or data breaches. Rather, it equally encompasses non-technical administrative or regulatory-based measures. Labelling such non-technical features as "security" does not confer technical character upon them and cannot support the presence of an inventive step.

The remainder of distinguishing feature 1.7 is obvious for the reasons already given.

Hence, claim 1 of auxiliary request 2 does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



T. Buschek

W. Zubrzycki

Decision electronically authenticated