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**Datasheet for the decision  
of 10 October 2025**

**Case Number:** T 1926/23 - 3.2.04

**Application Number:** 19157461.5

**Publication Number:** 3504991

**IPC:** A24F47/00, A61M15/06, H05B1/02,  
A61M11/04

**Language of the proceedings:** EN

**Title of invention:**  
VAPORIZATION DEVICE SYSTEMS

**Patent Proprietor:**  
Juul Labs International Inc.

**Opponents:**  
Nicoventures Trading Limited  
Smokeless.world GmbH

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(c), 76(1), 112(1)(a), 113(1)  
RPBA 2020 Art. 12(4)

**Keyword:**

Grounds for opposition - subject-matter extends beyond content of earlier application (yes)

Amendment to case - suitability of amendment to address issues (no)

Referral to the Enlarged Board of Appeal - (no)

Right to be heard - opposition procedure

**Decisions cited:**

G 0002/10

**Catchword:**



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

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Case Number: T 1926/23 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 10 October 2025**

**Appellant:** Juul Labs International Inc.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 24 November  
2023 revoking European patent No. 3504991  
pursuant to Article 101(3)(b) EPC.**

**Composition of the Board:**

**Chairman**           A. Pieracci  
**Members:**         G. Martin Gonzalez  
                      C. Heath

## **Summary of Facts and Submissions**

- I. The patent proprietor appeals the decision of the opposition division to revoke their patent.
  
- II. The opposition division held that claim 1 as granted (main request) and as in any of the auxiliary request before it (auxiliary requests 1 to 31) contained added subject-matter over the grandparent application as filed, publication number WO 2015/100361 A1 (D24), and revoked the patent.
  
- III. In preparation for oral proceedings the Board issued a written communication setting out its provisional opinion on the relevant issues.

Oral proceedings, in person, were held before the Board on 10 October 2025.

- IV. The appellant proprietor requests that the decision under appeal be set aside and the patent maintained as granted (main request) or in the auxiliary to maintain the patent according to one of auxiliary requests 1 to 31, 1a to 31a, or 32-136, filed with the statement of grounds, auxiliary requests 1a to 31a, 32-136 being new in appeal.

Opponent 1 as respondent requests that the appeal be dismissed.

Opponent 2 has not filed any reply to the proprietor's grounds of appeal and, as announced in writing, did not attend the oral proceeding.

V. Claim 1 of the requests relevant to this appeal reads as follows:

(a) Main request (as granted)

"A cartridge for a device for generating an inhalable aerosol with an airflow path, the cartridge comprising:  
a fluid storage compartment (32);  
a channel (50) comprising a portion of an air inlet passage (51);  
a second air passage (41) in fluid communication with the channel, the second air passage (41) being formed through material of the cartridge;  
a heater (36) affixed to a first end of the cartridge, the heater comprising a heater chamber (37) in fluid communication with the second air passage;  
a first condensation chamber (45) in fluid communication with the heater chamber;  
a second condensation chamber (46) in fluid communication with the first condensation chamber; and  
a mouthpiece (37) affixed to a second end of the cartridge wherein said mouthpiece comprises an aerosol outlet (47) in fluid communication with the second condensation chamber,  
wherein the air inlet passage (51) is formed by assembly of a device body and the cartridge."

(b) Auxiliary request 1 (amendment A1)

As in the main request with the following amendment (emphasis by the Board to indicate added text):

"...a heater (36) affixed to a first end of the cartridge, wherein the heater (36) encloses the first end of the cartridge (30) and a first end of the fluid storage compartment (32)..."

(c) Auxiliary request 2 (amendment A2)

As in the main request with the following amendment  
(emphasis by the Board to indicate added text):

"...a mouthpiece (37) affixed to a second end of the cartridge, wherein the mouthpiece (37) encloses the second end of the cartridge (30) and a second end of the fluid storage compartment (32),..."

(d) Auxiliary request 3 (Amendment A3)

As in the main request with the following amendment  
(emphasis by the Board to indicate added text):

"...a heater (36) affixed to a first end of the cartridge, wherein the heater (36) is affixed to a first end of the fluid storage compartment (32),..."

(e) Auxiliary request 4 (amendment A4)

As in the main request with the following amendment  
(emphasis by the Board to indicate added text):

"...a mouthpiece (37) affixed to a second end of the cartridge, wherein the mouthpiece (37) is affixed to a second end of the fluid storage compartment (32),..."

(f) Auxiliary request 5 (amendment A5)

As in the main request with the following amendment  
(emphasis by the Board to indicate added text):

"...a heater (36) affixed to a first end of the cartridge, wherein the heater (36) is affixed to a

first end of the fluid storage compartment (32) with a snap-fit coupling,..."

(g) Auxiliary request 6 (amendment A6)

As in the main request with the following amendment (emphasis by the Board to indicate added text):

"...a mouthpiece (37) affixed to a second end of the cartridge, wherein the mouthpiece (37) is affixed to a second end of the fluid storage compartment (32) with a snap-fit coupling,..."

(h) Auxiliary request 7 (amendment A7)

As in the main request with the following amendment at the end of the claim (emphasis by the Board to indicate added text):

"...wherein said mouthpiece comprises two or more aerosol outlets (47)."

(i) Auxiliary request 8 (amendment A8)

As in the main request with the following amendments (emphasis by the Board to indicate added or deleted text):

"A device for generating an inhalable aerosol from a liquid vaporizable material comprising aA cartridge for  
a device for generating an inhalable aerosol with an airflow path, and a device body, the cartridge comprising:...

...wherein the air inlet passage (51) is formed by assembly of the device body and the cartridge,

wherein the device body comprises a cartridge receptacle (21) into which the cartridge is insertably received."

(j) Auxiliary request 9 (amendment A9)

As in auxiliary request 8 with the following amendment (emphasis by the Board to indicate added or deleted text):

"...a channel (50) comprising a portion of an air inlet passage (51), wherein the channel comprises walls that are recessed into an exterior surface of the cartridge or that protrude from an exterior surface of the cartridge,...

...a cartridge receptacle (21) into which the cartridge is insertably received,  
wherein the air inlet passage (51) comprises a channel formed by assembly of the device body and the cartridge."

(k) Auxiliary request 10 (amendment A10)

As in the auxiliary request 9 with the following amendments (emphasis by the Board to indicate added or deleted text):

"...wherein the air inlet passage (51) comprises a channel formed by assembly of the device body and the cartridge,  
wherein the channel of the air inlet passage (51) comprises a channel that is integral to an exterior surface of the cartridge and an internal surface of the cartridge receptacle when the cartridge is inserted into the cartridge receptacle of the device body, or

wherein the channel of the air inlet passage (51) comprises an exterior surface of the cartridge and a channel that is integral to an interior surface of the cartridge receptacle when the cartridge is inserted into the cartridge receptacle of the device body."

(1) Auxiliary requests 11-31

Claim 1 of these requests corresponds to that of the main request (as granted) with the addition of different combinations of amendments A1 to A10 as follows:

Auxiliary Request 11 is based on a combination of amendments A1 and A2.

Auxiliary Request 12 is based on a combination of amendments A3 and A4.

Auxiliary Request 13 is based on a combination of amendments A5 and A6.

Auxiliary request 14 is based on a combination of amendments A1, A2 and A7.

Auxiliary request 15 is based on a combination of amendments A3, A4 and A7.

Auxiliary request 16 is based on a combination of amendments A5, A6 and A7.

Auxiliary request 17 is based on a combination of amendments A1, A2 and A8.

Auxiliary request 18 is based on a combination of amendments A3, A4 and A8.

Auxiliary request 19 is based on a combination of amendments A5, A6 and A8.

Auxiliary request 20 is based on a combination of amendments A1, A2 and A9.

Auxiliary request 21 is based on a combination of amendments A3, A4 and A9.

Auxiliary request 22 is based on a combination of amendments A5, A6 and A9.

Auxiliary request 23 is based on a combination of amendments A1, A2, A7 and A9.

Auxiliary request 24 is based on a combination of amendments A3, A4, A7 and A9.

Auxiliary request 25 is based on a combination of amendments A5, A6, A7 and A9.

Auxiliary request 26 is based on a combination of amendments A1, A2 and A10.

Auxiliary request 27 is based on a combination of amendments A3, A4 and A10.

Auxiliary request 28 is based on a combination of amendments A5, A6 and A10.

Auxiliary request 29 is based on a combination of amendments A1, A2, A7 and A10.

Auxiliary request 30 is based on a combination of amendments A3, A4, A7 and A10.

Auxiliary request 31 is based on a combination of amendments A5, A6, A7 and A10.

(m) Auxiliary requests 1a-31a (Amendment A11)

As in auxiliary requests 1-31 amended to indicate that the cartridge is a separable cartridge (emphasis by the Board to indicate added text):

"A separable cartridge..."

(n) Auxiliary requests 32 to 136

Claim 1 includes different combinations of amendments A1, A2, A3, A4, A5, A6 with additional amendments A11 and A12 to A14 below.

Amendment A12 (emphasis by the Board to indicate added text):

"...a fluid storage compartment (32) wherein the fluid storage compartment (32) is capable of retaining condensed aerosol fluid;...

...the heater comprising a heater chamber (37) in fluid communication with the second air passage, wherein the fluid storage compartment (32) is in fluid communication with the heater (36);..."

Amendment A13 (emphasis by the Board to indicate added text):

"...the heater comprising a heater chamber (37) in fluid communication with the second air passage, a fluid wick, and a resistive heating element;..."

Amendment A14 (emphasis by the Board to indicate added text)

"...the heater comprising a heater chamber (37) in fluid communication with the second air passage a fluid wick, a resistive heating element, a heater enclosure fitted on the fluid storage compartment, and heater contacts...

...wherein the air inlet passage (51) is formed by assembly of a device body and the cartridge, wherein exposed first heater contact tips on the heater contacts are configured to make contact with second heater contacts of the device body by the assembly of the device body and the cartridge.

Auxiliary requests 32 to 52 are based on auxiliary requests 11a to 31a and include additionally amendment A12.

Auxiliary requests 53 to 73 are based on auxiliary requests 11a to 31a and include additionally amendment A13.

Auxiliary requests 74 to 94 are based on auxiliary requests 53 to 73 and include additionally amendment A12.

Auxiliary requests 95 to 115 are based on auxiliary requests 11a to 31a and include additionally amendment A14.

Auxiliary requests 116 to 136 are based on auxiliary requests 32 to 52 and include additionally amendments A12 and A14.

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

(D24) WO 2015/100361 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 relates to electronic inhalable aerosol devices, or electronic vaping devices, see specification para 0001. The general teaching of the opposed patent relates to cartridges and device bodies for inhalable aerosol generating devices. The devices include a body with a receptacle for a cartridge and a detachable cartridge that can be inserted into the open end of the receptacle. The detachable cartridge

includes a fluid storage compartment holding a vaporisable material, which is vaporised to produce an aerosol vapour which delivers an active ingredient to the user.

2. Main request - Added subject-matter

2.1 The Board concurs with the conclusion of the opposition division that granted claim 1 contains added subject-matter extending over the contents of the grandparent application as filed, document D24 (publication number WO 2015/100361 A1), contrary to Art 100(c) EPC.

In the following discussion, references to original application, disclosure, claim, description or drawings refer to the grandparent application as published in document D24.

2.2 In deciding the question of allowability of a divisional application, i.e. whether it presents subject-matter which extends beyond the content of the earlier application as filed, the Board, following well established practice, must consider whether the amendments with respect to the earlier application are within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge and seen objectively and relative to the date of filing from the application documents of that earlier application. This is the "gold standard" (see **G 2/10**, reasons 4.3) according to which amendments are assessed and which is also to be applied to the issue of added subject-matter with respect to the earlier application (see the Case Law of the Boards of Appeal (CLB), 11th Edition, 2025, II.F.2.1.2).

2.3 The proprietor identifies original claim 159 as the starting point for the feature combination of granted claim 1, i.e. that granted claim 1 is based on an amended version of original claim 159. They also refer to paragraph 0047, which essentially literally reproduces the features of original claim 159. Original claim 159 reads as follows:

159. A cartridge for a device for generating an inhalable aerosol with an airflow path comprising:  
a channel comprising a portion of an air inlet passage;  
a second air passage in fluid communication with the channel;  
a heater chamber in fluid communication with the second air passage;  
a first condensation chamber in fluid communication with the heater chamber;  
a second condensation chamber in fluid communication with the first condensation chamber;  
and  
an aerosol outlet in fluid communication with second condensation chamber.

To arrive at the subject-matter of granted claim 1, the following features were added to this original claim:

- a fluid storage compartment
- the second air passage is formed through material of the cartridge
- a heater is affixed to a first end of the cartridge
- the heater comprises the claimed heater chamber
- a mouthpiece is affixed to a second end of the cartridge

- the mouthpiece comprises the claimed aerosol outlet
- the air inlet passage is formed by assembly of a device body and the cartridge

- 2.4 Independently from whether each of the above features may be found individually in the original application, the opposition division concluded - and the appellant-proprietor has not persuaded the Board otherwise - that there is no direct and unambiguous disclosure of the specific combination of these features, let alone their combination with those of original claim 159.
- 2.5 The Board first notes that the appellant proprietor has not identified any passage in the original grandparent application that discloses the specific combination of features of granted claim 1.
- 2.6 The grandparent application presents a large number of different possible embodiments of the cartridge. Throughout substantial parts of the description, features are repeatedly presented as optional ("in some embodiments...", "in other embodiments...", "the cartridge may comprise...", etc). By way of illustration, the qualifier "may" appears 622 times. The skilled person is thus confronted with numerous embodiments in which almost every feature or group of features is optional, being present in some embodiments and absent in others. It is not possible to ascertain how these optional features or groups of features are intended to be combined or to interact. Accordingly, there is no direct and unambiguous disclosure of which embodiments are meant to belong together, or whether certain embodiments are presented as further limitations of others, and if so, to what extent they

exclude, or do not exclude, the remaining optional features and embodiments.

The variability of the description further extends to the meanings and scopes assigned to certain terms, introducing additional ambiguity into the disclosure. For instance, the term "fluid storage compartment" may refer to a cavity holding the fluid, to the walls forming the cavity, or to the full entity shown in Fig. 9A which also partly defines the heater chamber. Similarly, "heater" is used for various configurations, including a heater chamber or not, a number of features such as a fluid wick, heater contact tips, a resistive heating element, a first condensation chamber, or might simply refer to an enclosure such as 36 in Fig. 7B.

The Board therefore shares the respondent opponent 1's view in this respect that such drafting gives rise to a "forest of optional features" from which the specific combination underlying granted claim 1 cannot be directly and unambiguously derived.

- 2.7 The appellant argues that all claimed features are nonetheless present in each of the disclosed embodiments. This is, however, not the case, since essentially all features are described as optional, depending on the embodiment. Not even the feature of "a fluid storage component", argued to be essential (to store the vaporizable material) and cited in about sixteen passages of the description (see grounds, bridging paragraph on pages 10-11), can be regarded as such, since the vaporizable material may also be solid (original paragraph 00078: "The material may be a solid, liquid, powder, solution, paste, gel, or any material with any other physical consistency").

The same applies to the other added features. For each, the appellant proprietor cites several different parts of the description, where the features are presented as optional or in combination with other features that overlap only partially with those of granted claim 1. By way of example, for the feature that the heater chamber is comprised by the heater (page 13 of the grounds), reference is made to original paragraphs 00022, 00035, 00037, 00062, 00172, 00226, 00232, and 00239; and for the feature that the heater is affixed to the first end of the cartridge (page 14), to paragraphs 00020, 00025, 00032, 00035, 00038, 00042, 00046, 00048, 00171, 00200, 00209, 00226, 00234, 00249, and 00264.

It therefore cannot be ascertained that an unambiguous disclosure of the specific combination of features as defined in granted claim 1 is directly and unambiguously derivable from the application as originally filed.

- 2.8 The appellant also argues that the skilled person, reading original claim 159, would recognise that it defines an airflow path, as expressly stated in its introductory portion. Original claim 159 is said to disclose the essential airflow path of the cartridge, while the amendments leading to granted claim 1 merely add structural details to, or flesh out, the features originally presented in combination, which form the skeleton of the claimed subject-matter. Accordingly, original claim 159 (or paragraph 0047) is considered to provide the technical teaching for, or pointer to, the combination of features defined in granted claim 1, without any further indication being required in the original disclosure.

This line of argument is not convincing. As discussed during the oral proceedings, no such technical guidance can be identified in the amendments to granted claim 1. It cannot be seen that what was added to original claim 159 coherently relates to the airflow path, or that the selection and scope of the added features reflect a unified technical teaching.

Several of the added features are unrelated to the airflow path. The feature of a fluid storage compartment is introduced in isolation, without any structural or functional relationship to the features defining the airflow path. The feature that the heater is affixed to a first end of the cartridge is likewise unconnected to any aspect of the airflow path. Its manner of attachment, or the fact that the heater and heater chamber form a structural unit, has no bearing on airflow considerations. The same applies to the added feature that a mouthpiece is affixed to a second end of the cartridge, which also lacks relevance to the airflow path.

Conversely, features originally disclosed as part of the airflow path or in connection with other features of original claim 159 are not considered. For instance, that the second air passage extends from an exterior surface of the cartridge to the internal fluid storage compartment (see e.g. paragraph 0030 cited by the appellant); or regarding the airflow path through the heater, the heater chamber, and the also claimed first condensation chamber (see paragraph 00239, cited by the proprietor): that the airflow path through the heater and heater chamber generates vapour within the heater circulating airflow path 54, which exits through the heater outlets 55 into a first (primary) condensation chamber 45, formed by components of the tank body

comprising the primary condensation channel/chamber rails 45b, the primary condensation channel cover 45a (the outer side wall of the heater enclosure). The same applies to adding the feature that the mouthpiece comprises the aerosol outlet, while disregarding that the secondary condensation chamber is formed along an exterior wall of the cartridge, as described for example in paragraph 00182, also cited by the appellant proprietor.

It is thus not persuasive that original claim 159 or paragraph 0047 offers a clear teaching for the selection of features in granted claim 1, or that such a combination is already substantially disclosed therein.

- 2.9 The appellant proprietor also submits that the specific embodiment of Figures 5-12 discloses all features in combination in a single embodiment, thereby providing a "pointer" to the claimed subject-matter.

The Board does not find this argument persuasive already because it cannot identify such "pointer". The embodiment of Figures 5-12 includes, in addition to those discussed above, further aspects and features disclosed both in these figures and in the corresponding description of the grandparent application. There is no indication or guidance leading the skilled person directly and unambiguously to the claimed selection of features. The figures merely show an arrangement containing numerous additional aspects and interactions, none of which provides a clear conceptual link to the specific combination defined in the granted claim.

This remains the case should the appellant proprietor's argument be understood as asserting that the embodiment of Figures 5-12 forms the basis for the claimed amendments. What is decisive for the assessment of added subject-matter is what the skilled person would directly and unambiguously derive from the original disclosure (the "gold standard"). Extracting from that embodiment a specific subset of features, without any indication in the original disclosure that specifically these features belong together, amounts, in a case such as the present one, to the artificial creation of a new embodiment and thereby a new teaching for which no direct and unambiguous disclosure exists. This conclusion follows directly from the application of the "gold standard".

2.10 The appellant proprietor argues in this context that the case law and principles cited by the opposition division (see appealed decision, section 4.3.9; Case Law of the Boards of Appeal, 11th edition 2025, II.E. 1.6.1 a) are not applicable in the present case. According to that case law, an application cannot serve as a reservoir from which features of separate embodiments are combined to construct a new embodiment without a clear pointer to that combination. The appellant proprietor contends that this principle does not apply here, since all features are allegedly disclosed in the single embodiment of Figures 5-12. There is therefore, in their view, no combination of features from different embodiments.

As a consequence of this argument, the appellant submitted during the oral proceedings before the Board a request for referral of a question to the Enlarged Board of Appeal pursuant to Article 112(1)(a) EPC. The following questions were proposed:

- 1) Does an originally disclosed single embodiment of a device which has all features recited in a claim provide a pointer to the combination of features of said claim?
- 2) Does the disclosure of a combination of specific features of a device provide a pointer to the combination of superordinate basic structural device components comprising and relating to these features?
- 3) Is a pointer to the claimed feature combination present if it is apparent to the skilled person that each of the claim features is meant to be part of a device as envisaged by the invention?

However, the Board sees no justification for such a referral. As explained above, the Board has reached its conclusion by directly applying the "gold standard" for the assessment of added subject-matter, i.e. what is within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, seen objectively and at the date of filing, from the whole of the documents (**G2/10**), to the facts of the present case. This fundamental principle is not called into question by the proposed referral. There is therefore no need for a referral to resolve the present appeal (see in this respect CLB, V.B.2.3.3).

Moreover, the Board's conclusions are consistent with established case law. There is therefore no question of non-uniform application of the law (see CLB, V.B. 2.3.6). The Board has merely applied the accepted principles to the specific facts of this case, which may naturally lead to a different outcome in other factual circumstances.

2.11 Finally, the appellant-proprietor also argues that the conclusion of the opposition division runs counter to the desirable harmonisation with the UPC, national courts, and within the Boards of Appeal of the EPO as set out in decision **G1/24**. This argument is likewise not convincing.

The UPC decision cited by the proprietor (UPC\_CoA\_382/2024) explicitly sets out, in section 52, the standard applied by the UPC, which coincides with the EPO "gold standard" (although not referred to by that name). The fact that its application to the specific circumstances of that case - concerning an on-body glucose sensor in the medical field - led the Court of Appeal to find the extraction of a feature from a specific context to amend the claimed subject-matter as being allowable does not in itself indicate a lack of harmonisation, but merely reflects the normal divergence in results arising from the application of the same legal principle to different facts.

The appellant also relies on a judgment of the German Bundesgerichtshof (BGH), GRUR 2025, 787, referring in particular to section 28, which they summarise as follows:

"Paraphrasing the above provided summary of German case law, the German Federal Supreme Court (BGH) allows the addition of single features out of plural features, even where the single feature and the plural features contribute to solving the same problem. It is furthermore emphasized that in such a case, it is not necessary to limit the claim to all features of the embodiment. The BGH sets out that (1) the feature combination claimed needs to form a technical teaching, which the skilled person

can derive from the original application as an embodiment of the invention. The BGH furthermore explains that (2) an intermediate generalization is only impermissible, if the original application discloses respective features inextricably linked to each other."

However, as already discussed above, in the present case the appellant proprietor has not convincingly demonstrated that the claimed combination of features - particularly the added ones - indeed forms a technical teaching which the skilled person can derive from the original application as an embodiment of the invention. As for the argument based on original claim 159 (and paragraph 0047), allegedly disclosing the essential airflow path and thus providing the technical teaching or pointer to the claimed combination, this reasoning is not convincing, as discussed above.

The appellant proprietor further cites decision **T 1011/23**, concerning the distinction between allowable and unallowable intermediate generalisations. This issue, however, is not decisive for the Board's present conclusion. Rather than a question of whether each individual feature has been extracted in the form of an allowable or unallowable intermediate generalisation, the decisive point is whether the particular combination of added features which was selected is as such directly and unambiguously derivable from the application documents of the earlier application. As previously discussed, the appellant proprietor has not convincingly shown any direct and unambiguous original disclosure for that specific selection, nor is such selection apparent from the embodiment itself.

2.12 In conclusion, the appellant proprietor has not convinced the Board that the opposition division erred in finding that the main request contains added subject-matter. The Board thus upholds the decision of the opposition division in this respect.

3. Auxiliary requests

In regard of the Auxiliary Requests, the Board in its written communication had made the following assessment:

*"5. Auxiliary requests 1-31*

*As noted by the proprietor themselves in their grounds, last para of page 6, none of these auxiliary requests, filed in time before the opposition division, includes a remedy against the objection of the "arbitrary aggregation of features". They contain amendments A1-A10 (see section IX.2 of the grounds). A1-A7 address objections related only to the features of the heater or the mouthpiece affixed to the first and second ends of a fluid storage compartment, while A8-A10 add features to overcome a novelty objection. These requests therefore appear to fail for added subject-matter, as concluded by the division.*

*6. New auxiliary requests 1a-31a, 32-136*

*6.1. These requests are new in appeal and represent an amendment to the appellant's case. Their admission is at the discretion of the Board, Art 12(4) RPBA.*

*6.2. Their late filing may be justified as an attempt to address the new arbitrary aggregation of features objection raised by the opponent 1 in their letter in*

*preparation to the oral proceedings, see in this respect section 4.4 of the appealed decision and section IX.1 of the grounds of appeal.*

*6.3. However, as noted by the opponent 1 in section C. 2 of their reply, whether the amendments are suitable to address the issues which led to the decision under appeal, the above added subject-matter objections, and the need for procedural economy as indicated in Art 12(4) RPBA may be considered.*

*6.4. The new requests do not appear to be suitable for overcoming the added subject-matter objections. These requests, which include amendments A11-A14 as detailed in section IX.2 of the grounds, aim to address some of the unallowable intermediate generalizations identified in section 4.3.15 of the appealed decision. However, the proprietor still fails to demonstrate a basis in the original application for the claimed combination of features. Specifically, there is no pointer or suggestion in the great-grandparent application that clearly supports combining the particular set of features extracted from disparate contexts, as highlighted in section C.3, page 54, of opponent 1's reply."*

All parties refrained from comment after issuance of the communication. Absent any further submissions and after reviewing its preliminary opinion, the Board sees no reason to change its point of view . The Board thus confirms the decision of the opposition division that auxiliary requests 1-31 contains added subject-matter, Art 76(1) EPC, and decides not to admit new auxiliary requests 1a-31a, 32-136 into the proceedings, Art 12(4) RPBA.

4. Right to be heard, principle of equal treatment of the parties

The appellant proprietor submits that (see section IV.1 of the grounds of appeal) the opposition division violated the principle of equality of arms, i.e. of equal treatment of the parties. In respect of this issue, the Board in section 8 of its preliminary opinion noted that:

*"There appears to be no violation of the appellant proprietor's right to be heard or the principle of equality of arms by the opposition division (see the grounds of appeal, pages 7-8, sections IV.1.5, IV.1.6).*

*The arbitrary aggregation of features added subject-matter objection was timely filed according to Rule 116(1) EPC, before the deadline for submissions in preparation for the oral proceedings. This issue was addressed during the oral proceedings where the chairman invited all parties to present their positions. The minutes, see point 1.1, show that the proprietor had sufficient opportunity to present their comments and arguments, without any indication of preferential treatment to one of the parties.*

*The appellant submits that they received no preliminary opinion from the opposition division on this issue before the oral proceedings, which might have aided in preparing responses such as auxiliary requests. However, the opposition division is not obliged to provide such preliminary opinion. To the extent that the proprietor was surprised during the oral proceedings or required additional time to prepare auxiliary requests, they did not request a break or adjournment. The minutes of the oral proceedings show*

*no indication of any such request being made (see sections B.2.1.1-B.2.1.3 of the opponent 1's reply and CLB, IV.C.6.1: Principle of equal treatment)."*

The appellant proprietor refrained from further comment on this issue. The Board, after reviewing its preliminary opinion and absent further comment, sees no reason to change its preliminary view. It therefore concludes that the opposition division did not violate the principle of equal treatment of the parties and that there was no violation of the proprietor's right to be heard, Art 113(1) EPC.

5. Since none of the appellant's arguments against the decision of the opposition division has convinced the Board, it confirms the appealed decision.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated