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

**Case Number:** T 1963/23 - 3.2.04

**Application Number:** 17728784.4

**Publication Number:** 3457875

**IPC:** A24D3/04, A24F1/12, A24D1/02

**Language of the proceedings:** EN

**Title of invention:**  
ARTICLE FOR USE IN APPARATUS FOR HEATING SMOKABLE MATERIAL

**Patent Proprietor:**  
Nicoventures Trading Limited

**Opponent:**  
JT International S.A.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 123(2), 84, 111(1)  
RPBA 2020 Art. 11, 12(6)

**Keyword:**

Novelty - auxiliary request 6 - main request in appeal (no)  
Amendments - auxiliary request 5 - auxiliary request in appeal  
- allowable (yes)  
Claims - auxiliary request 5 - clarity (yes)  
Late-filed objection - admitted (no)  
Remittal - (yes)

**Decisions cited:**

G 0001/24

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1963/23 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 26 November 2025**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
30 October 2023 concerning maintenance of the  
European Patent No. 3457875 in amended form.**

**Composition of the Board:**

**Chairman** A. Pieracci  
**Members:** C. Kujat  
K. Kerber-Zubrzycka

## 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. 3 457 875 in amended form according to auxiliary request 6 pursuant to Articles 101(3) (a) and 106(2) EPC.

II. The opposition division held inter alia that the subject-matter of claim 1 of auxiliary request 6 (main request in appeal) was novel over the disclosure of document D26, and that the amendments in auxiliary request 5 (auxiliary request in appeal) extend beyond the content of the application as filed.

In particular, the opposition division relied on the following pieces of evidence:

D2: WO 2014/158051 A1

D26: CN 104 921 296 A

D26a: English translation of document D26

III. The patent proprietor as appellant (hereafter: the patent proprietor) requests that the decision under appeal be set aside and that the patent be maintained based on auxiliary request 6 or, auxiliarily, based on one of the auxiliary requests 5 or 9 to 16.

IV. The opponent as appellant (hereafter: the opponent) requests that the decision under appeal be set aside and that the patent be revoked.

V. 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 26 November 2025 in the presence of both parties by video-conference.

VI. Independent claim 1 of the relevant requests, i.e. auxiliary requests 6 and 5 in that order, reads as follows:

*Auxiliary request 6*

"A smoking article (301) for insertion into an apparatus (1) for heating smokable material to volatilise at least one component of the smokable material, the smoking article (301) comprising: a body of smokable material (303); and an assembly (305) comprising: a cooling segment (307) which is an annular tube located around and defining an air gap within the cooling segment (307) to provide a chamber for heated volatilised components generated from the body of smokable material (303) to flow and for cooling the volatilised at least one component of the smokable material (303); a filter segment (309) adjacent to the cooling segment (307) for filtering the volatilised at least one component of the smokable material (303); and a mouth end segment (311) adjacent to the filter segment (309) for being received in a mouth of a user, wherein the cooling segment (307) is located adjacent the body of smokable material (303) and between the body of smokable material (303) and the filter segment (309) such that the cooling segment (307) is in an abutting relationship with the smokable material (303) and the filter segment (309); wherein the cooling segment (307) comprises a ventilation region (317) to enable air to pass into the cooling segment (307) to mix with the volatilised at

least one component of the smokable material (303), the ventilation region (317) comprising one or more rows of holes formed through an outer wall of the cooling segment (307), wherein the filter segment (309) is located in between the cooling segment (307) and the mouth end segment (311)."

*Auxiliary request 5*

Claim 1 is as claim 1 for the auxiliary request 6 but with the following amendments (additions and deletion highlighted by the Board ):

"... a cooling segment (307) ~~which is~~ made of paper, having a length of at least 15mm and comprising an annular tube located around and defining an air gap within the cooling segment (307) to provide a chamber for heated volatilised components generated from the body of smokable material (303) to flow and for cooling the volatilised at least one component of the smokable material (303);

... the ventilation region (317) comprising one or more rows of holes formed through an outer wall of the annular tube of the cooling segment (307), at least one of the holes of the one or more rows having a diameter of between 100 and 500 µm wherein the filter segment (309) is located in between the cooling segment (307) and the mouth end segment (311)."

VII. The relevant submissions of the parties will be discussed in detail in the reasons for the decision.

## **Reasons for the Decision**

### 1. *Auxiliary request 6 - Novelty - Article 54 EPC*

The opponent disputes the decision's finding that the subject-matter of claim 1 of auxiliary request 6 is novel over the disclosure of document D26, see paragraph 26.3 of the impugned decision. In the following, quotations stem from the English translation D26a.

1.1 Document D26 concerns a composite filter 1 for a heat-not-burn cigarette, see figures 1 and 2 of the document. The cigarette contains a tobacco segment 12 which is joined to an axially aligned filter by tipping wrapper 10. The filter consists of a tubular paper wrap 8, 9 with a composite filter 1 located at the mouth end, and three tubular filters 2, 3, 4 located between the composite filter and the tobacco material 12. According to paragraph [0015] of the document, the composite filter comprises a proximal lip end filled with a conventional filler and a distal lip end filled with a porous solid piece of a relatively low coefficient of thermal conductivity and a low draw resistance. The parties agree that the distal lip end in document D26 may be considered the filter segment according to claim 1 of auxiliary request 6, and the proximal lip end be considered the mouth end segment.

1.2 With regard to the disclosure of a cooling segment in document D26, tipping paper 10, first wrap paper 9 and second wrap paper 8 together with the first hollow filter 2, the second hollow filter 3, and the third hollow filter 4 form an annular tube which cools the volatilised tobacco components. According to paragraph

[0037] of document D26, holes are provided in tipping paper 10, and thus, the tipping paper must be included when a cooling segment is identified in that document. Figure 1 of that document discloses that the mouth end segment (the proximal lip end according to paragraph [0015] of D26) and the filter segment (the distal lip end according to paragraph [0015] of D26) are fully contained inside the wrap and tipping papers 8, 9 and 10. From that, the opposition division concluded that the filter segment is not located in between the cooling segment and the mouth end segment, see the third paragraph on page 19 of the impugned decision. This is contested by the opponent who essentially argues that the paper tube consisting of tipping paper 10, first wrap paper 9 and second wrap paper 8 can be notionally split into annular sections, which can then be assigned to the cooling segment, the mouth end segment or the filter segment.

- 1.3 The decision on novelty vis-à-vis document D26 depends on whether the various segments defined in claim 1 of auxiliary request 6 meet the requirements
- that the filter segment is located adjacent to the cooling segment (and also, that the mouth end segment is located adjacent to the filter segment, and that the cooling segment is located adjacent to the body of smokable material), and
  - that the cooling segment is in an abutting relationship with the smokable material and the filter segment,
- when the paper tube 8, 9, 10 of document D26 is notionally split into annular sections which are assigned to the various segments in claim 1.

This is disputed by the patent proprietor, who essentially argued during oral proceedings before the

board that the end surfaces of two adjacent elements must face each other. In their letter of 15 July 2024, see the first paragraph on page 2, the patent proprietor referred to the Merriam-Webster's dictionary quoted by the opponent and argued that the term abutting requires adjacent surfaces to be in contact with each other.

1.4 The board does not share the patent proprietor's narrow construction of the terms "adjacent" and "abutting". According to established jurisprudence, see Case Law of the Boards of Appeal ("CLBA"), 11th edition 2025, II.A.6.1, a non-specific definition in a claim should be given its broadest technically sensible meaning in the context of that claim. In the present case, the board believes that the terms "adjacent" and "abutting" have a broader technically sensible meaning than what was argued by the patent proprietor.

1.4.1 Concerning the term "abutting", the patent proprietor relies on the Merriam-Webster dictionary, which defines the term as "to border on: to touch along an edge". However, this term is used in a broader sense in the patent. Pursuant to the decision G 1/24 of the Enlarged Board of Appeal, the description and drawings shall always be consulted to interpret the claims when assessing the patentability of an invention under Articles 52 to 57 EPC. Paragraph [0013] of the patent states that *"In one example, the cooling segment 107 is located adjacent the body of smokable material 103 between the body of smokable material 103 and the filter segment 109, such that the cooling segment 107 is in an abutting relationship with the smokable material 103 and the filter segment 103. In other examples, there may be a separation between the body of smokable material 103 and the cooling segment 107 and*

*between the body of smokable material 103 and the filter segment 109.*" (emphasis added by the board). The board gleans from this passage of the description that a technically sensible meaning of the term "abutting" is that there is no gap or separation between the elements which are in an abutting relationship. Based on this broader definition, neighbouring annular sections obtained by notionally splitting the paper tube formed by layers 8, 9, 10 in document D26 are in an "abutting relationship". This is because there is no gap or separation between these neighbouring annular sections, regardless of the absence of touching surfaces at the position of a notional split of the paper tube.

- 1.4.2 Concerning the term "adjacent", the board is not convinced that this term must be construed narrowly. The patent proprietor did not submit any evidence for their view that the end surfaces of two adjacent elements must face each other. Instead, according to the Merriam-Webster's dictionary, adjacent means having a border in common. In the board's view, a border is a notional split of terrain which does not create facing end surfaces e.g. of the adjoining housing plots or countries resulting from that notional split. The dictionary presents the example "their house is adjacent to a wooded park". Also in this example, at least the wooded park does not have an end surface, which therefore cannot face an end surface of the house in the example. The board concludes that a technically sensible meaning of the term "adjacent" is adjoining, which in its broadest sense only requires that two elements are next to each other. Whether or not these elements have facing end surfaces is left open.

- 1.4.3 The board therefore comes to the intermediate conclusion that the terms "adjacent" and "abutting" in claim 1 of auxiliary request 6 do not exclude a notional split of an element into sections which are assigned to the various segments in the claim.
- 1.5 This conclusion is not altered by the deletion of paragraph [0035] of the description from auxiliary request 6 during the oral proceedings before the opposition division, see point 30 on page 25 in combination with page 54 of the impugned decision and paragraph 6.5 of the minutes of the oral proceedings before the opposition division.
- 1.5.1 Paragraph [0035] of the patent read: *"It should be appreciated that, in one example, the mouth end segment 111 and the cooling segment 107 may be formed of a single tube and the filter segment 109 is located within that tube separating the mouth end segment 111 and the cooling segment 107."* This paragraph refers to an embodiment wherein the mouth end segment and the cooling segment are formed of a single tube. The board understands this in the sense that the tube in the deleted embodiment is notionally split into two sections based on their functions.
- 1.5.2 During the oral proceedings before the board, the patent proprietor argued that a notional split of an element in the prior art, e.g. of the paper tube formed by layers 8, 9, 10 in document D26, would no longer be allowed for assessing novelty because of the deletion of paragraph [0035] from the description of the patent. The board disagrees, because such notional split still falls under the broader technically sensible meaning of the terms "adjacent" and "abutting" in claim 1, see above. In particular, the deletion of paragraph [0035]

does not exclude subject-matter from the claim and in particular is not equivalent to the introduction of a disclaimer into the claim, notwithstanding whether a disclaimer could have been introduced in the present case.

- 1.6 Based on the board's construction of the terms "adjacent" and "abutting" in claim 1 of auxiliary request 6, see above, the opposition division's conclusion in paragraph 26.1 of the impugned decision that a single tube may not be sub-divided into segments (wrapper 22 of document D2 divided into cooling segment 16, filter segment 18 and mouth end segment 20), and thus, does not disclose a filter segment between a cooling segment and a mouth end segment, is not correct. This also applies to the opposition division's decision in paragraph 26.3 with regard to such a notional split in document D26.
- 1.7 Instead, it follows from the board's construction of these features that the paper tube formed by layers 8, 9, 10 in document D26 may be notionally split for the assessment of novelty of the claimed subject-matter. Thereby, the annular section of the paper tube surrounding first to third hollow filters 2, 3, 4, i.e. the section having the function of a cooling segment, is in an abutting relationship with the annular section of the paper tube surrounding the filter - i.e. the sections having the function of a filter segment and the mouth end segment. By the same token, the annular section of the paper tube surrounding first to third hollow filters 2, 3, 4 is in an abutting relationship with the tobacco segment 12 (and that part of the tipping paper 10 assigned to the tobacco segment 12 after the notional split).

1.8 Summarizing the above, the board concludes that the subject-matter of claim 1 of auxiliary request 6 is not novel over the disclosure of document D26, Article 54 EPC.

2. *Auxiliary Request 5 - Amendments - Article 123(2) EPC*

The opponent challenges allowability of the amendments in claim 1 of auxiliary request 5.

2.1 Claim 1 of auxiliary request 5 is based on claim 11 of the application as filed and contains further features taken from pages 5, 6 and 9 of the application as filed. The opponent argues that the feature "a cooling segment (307) made of paper, having a length of at least 15mm and comprising an annular tube..." contains an unallowable amendment over the disclosure that the cooling segment is an annular tube on page 6, line 12 of the application as filed. In their view, claim 2 of the application as filed could not serve as a basis for the amendment, because this claim is directed to a cooling segment comprising a hollow tube, which the opponent considered to be more general than the term annular in the amendment. The opponent also put forward that hollow does not restrict the geometry of the tube while annular must be interpreted as a ring-shaped tube with a circular cross-section.

2.2 The board disagrees. The feature "comprising an annular tube located around and defining an air gap within the cooling segment" in claim 1 of auxiliary request 5 can only be construed in the sense that the annular tube is hollow. Otherwise, the annular tube could not be located around an air gap, and there also could not be any air gap defined by the annular tube. The board therefore arrives at the preliminary conclusion that

the expression "cooling segment comprises a hollow tube" in claim 2 of the application as filed provides a basis for the amendment.

2.3 This conclusion is not altered by the opponent's argument that an annular tube would be a specific type of a hollow tube, i.e. having the cross-section of a circular ring. While the board agrees with the opponent in that an annular tube has a ring-shaped cross-section, a ring is not necessarily circular. As there are also e.g. square rings, the board considers the terms annular and ring-shaped synonymous. This broader claim construction is confirmed by page 4, lines 22 to 25 of the application as filed, according to which *"... "Annular" does not itself mean circular. In some embodiments, an element that is described herein as "annular" may indeed be circular, but in other embodiments the element may be "annular" and other than circular, such as elliptical or polygonal."* The board concludes that there is no difference between the annular tube according to page 6, line 12 and the hollow tube according to claim 2 of the application as filed. Therefore, claim 2 of the application as filed provides a basis for the amendment in claim 1 of auxiliary request 5.

2.4 In their letter of 15 July 2024, the opponent also argued that the features directed to a cooling segment made of paper, the cooling segment having a length of at least 15mm and the filter segment located in between the cooling segment and the mouth end segment in claim 1 of auxiliary request 5 stem from a combination of two different embodiments, see items 3, 94, 105 and 119 of that letter. In the opponent's view, figures 1 and 2 of the application as filed relate to a different embodiment than figures 3 and 4. In its communication,

the board was of the preliminary opinion that this objection is not convincing. The board presented the following preliminary view (see paragraph 4.3 of the communication):

*"4.3 Concerning the amendments in claim 1 of Auxiliary Requests 1-4 and 6-8, the Board is of the preliminary view that they are disclosed particularly in figures 1 and 3, as well as in the corresponding description of the application as filed. It appears that the only difference between the embodiments in figures 1 and 3 is the provision of a ventilation region 317. The absence of a tipping paper seems to be immaterial because it seems to be implicitly present in any smoking article with a filter..."*

As the opponent refrained from further comment, the board - after a re-assessment of the opponent's arguments - confirms its provisional opinion that this objection is not convincing.

- 2.5 In their letter of 15 July 2024, the opponent argued that the feature directed to the holes formed through an outer wall of the annular tube of the cooling segment in claim 1 of auxiliary request 5 violates the provisions of Article 123(2) EPC. In their view, holes are originally described to be formed through "an outer wall of the cooling segment" or through "the outer layer of the article", but not through an outer wall of an annular tube, see item 53 of that letter. The board disagrees, because page 6, line 12 of the application as filed discloses that the cooling segment is an annular tube. Therefore, the holes will be formed through the outer wall of the annular tube of the cooling segment if they are formed through an outer wall of the cooling segment, as argued by the opponent

with reference to page 2, lines 16 and 17 of the application as filed.

2.6 Summarizing the above, claim 1 of auxiliary request 5 fulfils the requirements of Article 123(2) EPC.

3. *Auxiliary Request 5 - Clarity - Article 84 EPC*

3.1 The opponent asserts that the feature "cooling segments comprising an annular tube located around and defining an air gap within the cooling segment" in claim 1 is not clear, and that the feature "the cooling segment (307) is in an abutting relationship with the smokable material (303) and the filter segment (309)" in claim 1 renders the scope of protection of the claim unclear. These objections were raised in the context of auxiliary request 6, see page 10 of the opponent's statement of grounds of appeal. As claim 1 of auxiliary request 5 also contains these features, the objections apply *mutatis mutandis* to this claim. During the oral proceedings before the board, the opponent referred to their written submissions.

3.2 In its communication, the board was of the preliminary opinion that the first objection is not convincing, and that the second objection should not be admitted. The board presented the following preliminary view (see paragraphs 4.1 and 4.2 of the communication):

*"4.1 The Board is of the preliminary opinion that the feature "cooling segments comprising/is an annular tube located around and defining an air gap within the cooling segment... " in claim 1 is clear. Armed with a mind willing to understand, a skilled person seems to construe this feature as a hollow tubular cooling segment.*

*4.2 The further objection that the scope of protection afforded by claim 1 is not clear, see paragraph 3 on page 10 of the opponent's statement of grounds of appeal is not discussed in the impugned decision, see particularly paragraph 19 on clarity of Auxiliary Request 1. In the Board's preliminary view, this shows that the objection was not raised or maintained in the proceedings leading to the decision under appeal. A correction of the minutes and/or the decision in that respect has not been requested. No circumstances of the appeal case have been indicated which would justify the admittance. The Board is therefore inclined not to admit the objection, Article 12(6) RPBA."*

- 3.3 As the opponent refrained from further comment, the board - after a re-assessment of the opponent's arguments - confirms its provisional opinion that the objection against the feature "the cooling segment (307) is in an abutting relationship with the smokable material (303) and the filter segment (309)" is not admitted, Article 12(6), second sentence, RPBA. The board also confirms its provisional opinion that the clarity objection against the feature "cooling segments comprising an annular tube located around and defining an air gap within the cooling segment" is not convincing. Therefore, the claims of auxiliary request 5 are clear, Article 84 EPC.

4. *Remittal - Article 111(1) EPC, Artikel 11 RPBA*

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. Whether "special reasons" present themselves is to be decided on a case-by-case basis. In the present case, the fact that the opposition division did not decide on the additional features in all auxiliary requests, and in particular not on the diameter of the ventilation holes (e.g. auxiliary requests 5 and 9), the ventilation ratio (e.g. auxiliary requests 10 to 13) or the insertion depth into the heating apparatus (auxiliary requests 14 to 16) constitute special reasons which justify remittal to the opposition division. To allow a full examination of these issues remittal of the case for further prosecution appears appropriate in accordance with established jurisprudence. This is supported by both parties.

## 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

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated