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**Datasheet for the decision
of 20 March 2026**

Case Number: T 0034/24 - 3.5.01

Application Number: 08860921.9

Publication Number: 2234508

IPC: A24F40/42

Language of the proceedings: EN

Title of invention:

AEROSOL DEVICES AND METHODS FOR INHALING A SUBSTANCE AND USES
THEREOF

Patent Proprietor:

Juul Labs, Inc.

Opponent:

Nicoventures Trading Limited

Headword:

Sealed lid/JUUL LABS

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (second auxiliary request - yes)

Decisions cited:

T 2027/23



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Case Number: T 0034/24 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 20 March 2026

Appellant: Juul Labs, Inc.
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Respondent: Nicoventures Trading Limited
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Representative: Dehns
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 3 November 2023
concerning maintenance of the European Patent
No. 2234508 in amended form.**

Composition of the Board:

Chairman R. Moser
Members: L. Falò
L. Basterreix

Summary of Facts and Submissions

- I. The appeal was filed by the patent proprietor (appellant) against the opposition division's interlocutory decision to maintain European patent No. 2 234 508 in amended form according to the third auxiliary request filed during oral proceedings on 27 June 2023.
- II. With the statement of grounds of appeal, the proprietor requested that the opposition division's decision be set aside and that the patent be maintained as granted or according to auxiliary requests 1 to 19, as filed or re-filed on appeal. Auxiliary requests 1 to 3 correspond to those requests underlying the contested decision. The proprietor also requested oral proceedings.
- III. The opponent (respondent) did not reply to the statement setting out the grounds of appeal. Furthermore, by letter of 26 February 2026, the respondent announced that it would not attend the oral proceedings.
- IV. Oral proceedings were held by videoconference on 20 March 2026. At the end of the oral proceedings the proprietor withdrew the main request and the first auxiliary request.
- V. Claim 1 of the second auxiliary request reads as follows:

A cartridge for use in a device for aerosolizing a material comprising:

(a) a shell for containing a vaporizable material, wherein the vaporizable material comprises (i) tobacco particles less than 2 mm in diameter using cured tobacco, (ii) an aerosol-forming medium comprising at least one of propylene glycol and glycerin, and (iii) flavorings;

wherein, before filling the cartridge, the vaporizable material is mixed until even consistency is achieved; and

(b) a lid sealed upon the shell, thereby forming a sealed cartridge containing the vaporizable material.

VI. Claim 8 of the second auxiliary request reads as follows:

A method of filling a cartridge containing a vaporizable material comprising:

(a) loading the vaporizable material into a shell of the cartridge; and

(b) sealing a lid on the shell of the cartridge;

wherein the vaporizable material comprises (i) tobacco particles less than 2 mm in diameter using cured tobacco, (ii) an aerosol-forming medium comprising at least one of propylene glycol and glycerin, and (iii) flavorings;

wherein, before filling the cartridge, the vaporizable material is mixed until even consistency is achieved.

Reasons for the Decision

Second auxiliary request - inventive step over D2

1. Claim 1 of the second auxiliary request is identical to claim 1 of the patent as maintained by the opposition division.
2. Compared with claim 1, the corresponding method claim 8 omits the expression "*thereby forming a sealed cartridge containing the vaporizable material*" from the lid-sealing step (step (b)). The opposition division held that this claim lacked an inventive step over document D2, EP 0352107 A2, published on 24 January 1990.
3. It is common ground that the only feature differentiating claim 8 from the disclosure of D2 is step (b), namely, "*sealing a lid on the shell of the cartridge*". The question is how this feature should be interpreted, and whether it supports an inventive step.
4. The proprietor essentially argued that the feature should be interpreted, in the light of the description, in the sense that sealing the lid implied creating a sealed (in the sense of "air-tight") cartridge, thereby preserving the freshness of its contents. Hence, the subject matter of method claim 8 corresponded to that of apparatus claim 1, which had been considered inventive by the opposition division.

The opposition division held that the wording of the claim did not require the cartridge as a whole to be sealed, but only that the lid be sealed to the shell (see points 21.3 and 21.5 of the decision).

5. The board agrees with the opposition division's interpretation. It is a well-established principle laid down by the case law of the boards that a non-specific definition in a claim should be given the broadest, technically sensible meaning, and that features only disclosed in embodiments of an invention do not generally limit the scope of the claimed subject-matter (see e.g. T 2027/23, Catchword).
6. In the present case, the claim requires that the points of contact between the lid and the cartridge shell be sealed, i.e. air-tight; however, this does not exclude the cartridge as a whole remaining permeable to air. In other words, sealing the cartridge cannot be considered implicit in sealing the lid to the shell.
7. The opposition division formulated the technical problem as that of providing a connection between the shell and the lid, and concluded that the skilled person would consider providing a sealed connection (as e.g. in the form of a gluing line encircling the lid, or a friction fit) as a straightforward design option (see point 21.3 of the decision).
8. The proprietor essentially argued that the opposition division's conclusion was based on hindsight. Document D2 disclosed a "clip", rather than a lid. For the apparatus to work, the clip necessarily had to be permeable to the generated aerosol (see column 10, lines 35 to 40). The skilled person would therefore have no reason to provide a sealed connection between the clip and the shell. During the oral proceedings the proprietor further argued that the examples provided by the opposition division of possible ways of connecting the clip to the shell do not necessarily imply that

said connection is air-tight.

Furthermore, the proprietor submitted that the smoking article 10 shown in Figures 3 and 4 of D2, comprising a chamber 21 for holding tobacco-containing pellets, a heater element 20 and a wrapping paper 14 (see column 9, starting at line 51) does not represent a reusable cartridge as claimed.

The proprietor further argued that D2 is not compatible with the cartridges disclosed in D3 (see Figures 5 to 8), since their use would require the device to be completely redesigned.

9. The board finds the appellant's arguments persuasive.

The board interprets the term "sealing a lid" broadly, i.e. as not necessarily implying that the cartridge as a whole is air-tight (see point 6 above). Accordingly, the chamber disclosed in D2, although it comprises apertures at both ends (see for example column 9, lines 12 to 18), as well as the cartridges shown in D3, fall under the scope of claim 8.

However, starting from D2, the skilled person would not be motivated or prompted to seal the clip to the shell. A clip is typically a mechanical, releasable, shape-based retention means. Sealing it to the shell would not only go against its usual function, but would also unnecessarily increase the complexity of the manufacturing process, since simple mechanical retention would be sufficient to hold the clip securely in place. Moreover, even attaching the clip to the inner wall of the cartridge by means of adhesive or glue, as suggested by the opposition division, would not necessarily result in a sealed connection.

The board further considers that the device disclosed in D3, in particular its heating mechanism (see paragraph [0048]), operates according to a different principle from that of D2. The skilled person would therefore not arrive at the claimed subject-matter by making a straightforward modification to D2 so as to accommodate the cartridges from D3.

10. Accordingly, the board judges that claim 8 is inventive over D2 alone or in combination with D3.

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 with the order to maintain the patent with the following claims and a description to be adapted if necessary:

Claims 1 to 11 according to the second auxiliary request filed on 27 June 2023 and re-filed with the statement of grounds of appeal.

The Registrar:

The Chairman:



T. Buschek

R. Moser

Decision electronically authenticated