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**Datasheet for the decision
of 2 October 2025**

Case Number: T 0082/24 - 3.2.07

Application Number: 18782511.2

Publication Number: 3678942

IPC: B65B19/04, A24C5/32, A24C5/35,
B65B35/34, B65B35/44, B65G15/14

Language of the proceedings: EN

Title of invention:
HOPPER FOR SMOKING ARTICLES

Patent Proprietor:
G.D Società per Azioni

Opponent:
Focke & Co. (GmbH & Co. KG)

Headword:

Relevant legal provisions:
EPC Art. 54(2), 123(2)
RPBA 2020 Art. 12(3), 12(5), 12(6)

Keyword:

Novelty - main request (no) - auxiliary request (no)
Amendments - added subject-matter (yes)
Discretion not to admit submission - requirements of Art.
12(3) RPBA 2020 met (no)
Late-filed request - admitted in first-instance proceedings
(no) - circumstances of appeal case justify admittance (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0082/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 2 October 2025

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 8 January 2024
revoking European patent No. 3678942 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
Y. Podbielski

Summary of Facts and Submissions

I. The patent proprietor (appellant) filed an appeal within the prescribed period and in the prescribed form against the decision of the opposition division revoking European patent No. 3 678 942.

II. The appellant initially requested:

- that the decision under appeal be set aside and that the patent be maintained as granted (main request), or alternatively
- that the patent be maintained according to one of the first to fifth auxiliary requests, filed during the oral proceedings before the opposition division and re-filed with the statement setting out the grounds of appeal.

The respondent (opponent) initially requested

- that the appeal be dismissed.

III. In preparation for the oral proceedings the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, according to which the appeal was likely to be dismissed.

IV. Oral proceedings before the board took place on 2 October 2025.

At the conclusion of the oral proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

V. The final requests of the parties correspond to the requests initially submitted (see point II above).

VI. The following documents, mentioned in the decision under appeal will be referred to:

D1: US 4 555 011

D2: US 3 127 971.

VII. Independent claim 1 of the main request reads as follows (features are identified in accordance with the feature analysis of section II.1 of the appealed decision):

"A hopper (1) for smoking articles (S) comprising:

- a) an inlet portion (10) for the inlet of smoking articles into the hopper (1);
- b) at least an output mouth (B) comprising a plurality of ducts (V), each duct (V) having an inlet (2) and an outlet (20), for allowing the exit of the smoking articles (S) from the hopper (1);
- c) a connection portion (3), connecting the inlet portion (10) with the ducts (V) of the output mouth (B) and comprising two lateral walls (30) opposed each other, against which the smoking articles (S) abut and along which the smoking articles (S) flow falls in an output direction (D) toward the output mouth (B);
- d) a plurality of agitating elements (4), positioned at the inlet (2) of the ducts (V) of the output mouth (B), which receives on them, by gravity, the smoking articles (S) flow; each agitating element (4) being movable with respect to one of its axes for facilitating the smoking articles (S) fall from the connecting portion (3) toward the outlets (20) of the ducts; and
- e) at least an unloading element (5), disposed at the

connection portion (3) between the two lateral walls (30), upstream with respect to the agitating elements (4) in the output direction (D); the unloading element (5) being shaped in such a way to receive the smoking articles (S) flow during their fall in the output direction (D), and unloading the plurality of agitating elements (4) from the weight of the smoking articles (S) flow;

f) wherein the connection portion (3) comprises a first part (31) and a second part (32), adjacent to the first part (31) and downstream with respect to the first part (31) in the output direction (D);

g) and wherein the cross section of the first part (31) is smaller than the cross section of the second part (32), in such a way to define at least a channel (6) having a cross section widening in the output direction (D); the hopper (1) is characterized in that

h) the dimension of the cross section of the first part (31) of the connection portion (3) is equal to a multiple of the dimension of the cross section of a smoking article (S), increased by a space that is smaller than half the dimension of the cross section of a smoking article (S).

Claim 1 of the **first auxiliary request** corresponds to claim 1 of the main request, with the following features added at the end of feature f) thereof:

"wherein the first part (31) is defined between a lateral wall (30) of the connection portion (3) and at least a corresponding wall of the unloading element (5);".

Claim 1 of the **second auxiliary request** corresponds to claim 1 of the main request, with the following features added at the end of feature f) thereof:

"wherein the smoking articles are cigarettes; wherein the first part (31) is defined between a lateral wall (30) of the connection portion (3) and at least a corresponding wall of the unloading element (5);"

and the following features added at the end of feature h):

"so that the cross section of the first part (31) of the connection portion (3) is sized so as to permit the passage of a given number of smoking articles (S)".

Claim 1 of the **third auxiliary request** corresponds in substance to claim 1 of the main request, with the following features added at the end of feature h) thereof:

"the unloading element (5) comprises a sloping portion (50, 51) for receiving the smoking article (S) flow in their fall in the output direction (D); said sloping portion comprises a first wall (50) and a second wall (51) that are contiguous and tilted between them as to define a vertex (55); and the unloading element (5) has a section shaped as a pentagon".

Claim 1 of the **fourth auxiliary request** corresponds in substance to claim 1 of the main request, with the following features added at the end of feature h) thereof:

"and there is a plurality of unloading elements (5): a first unloading element (5) between an output mouth (B)

and the other, besides a second unloading element (5) arranged between two adjacent output mouths (B)."

Claim 1 of the **fifth auxiliary request** corresponds in substance to claim 1 of the **fourth auxiliary request**, with the following features added at the end thereof:

"the unloading elements (5) comprise a sloping portion (50, 51) for receiving the smoking article (S) flow in their fall in the output direction (D); said sloping portion comprises a first wall (50) and a second wall (51) that are contiguous and tilted between them as to define a vertex (55); and the unloading elements (5) have a section shaped as a pentagon."

Reasons for the Decision

1. Main request

1.1 The opposition division found that the subject-matter of claim 1 of the main request lacks novelty over the hopper disclosed in document D2 (decision under appeal, point II.1.1).

They concluded that even if the cross section of the smoking article were standardized, as argued by the appellant, still the subject-matter of the claim was not new because there is, in the hopper disclosed in D2, a cross section meeting the dimensional requirements of feature h).

1.2 The appellant argues that the subject-matter of claim 1 of the main request is new because the characterizing portion thereof (feature h) is not disclosed by D2.

In the context of the claim, the skilled person would understand that the cross section of a part through which smoking articles flow refers to the useful area for passing these articles in a plane perpendicular to the flow direction.

The cross section of a smoking article can only be, in the eyes of a skilled person, a section taken perpendicularly to the longitudinal axis thereof.

Numerous patent documents in the cigarette packing field (including several filed by the respondent) use the term "cross section" in that sense.

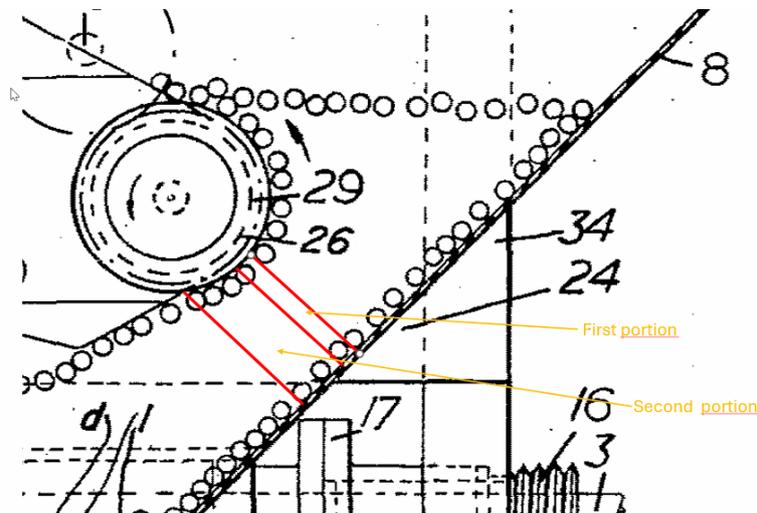
When designing a hopper, the skilled person first determines the type of smoking articles (i.e. their dimensions) and then sizes the hopper and its components accordingly with the result that a hopper for operating with a specific type of smoking articles cannot be used for operating with another type having different dimensions.

The connection portion of a hopper can have variable dimensions only along the output direction, perpendicular to the longitudinal axes of cigarettes, because variable dimensions in other directions would prevent cigarettes from completely filling the hopper and descending neatly.

The appellant concludes by stating that the findings of the opposition division on lack of novelty are not based upon any concrete disclosure of feature h) found in the prior art because none of the allegedly novelty destroying documents, including D2, identified in the appealed decision provides an indication of the relative dimension of the cross section of the first

part of the connection portion with respect to the cross section of the smoking articles.

During the oral proceedings before the board the appellant presented an annotated version of part of figure 1 of D2 (see below) and explained why feature h) is not directly and unambiguously derivable from this piece of prior art.



Annotated version of part of figure 1 of D2 presented by the appellant

Referring to the schematic nature of figure 1 of D2, the appellant explained that it is not possible to identify a first part of the connection portion and a second part **adjacent and downstream** with respect to the first part in the output direction (feature f)) wherein the cross section of the first part is at the same time

- **smaller** than the cross section of the second part, in such a way to define at least a channel having a cross section widening in the output direction (feature g))

and at the same time and beyond doubt

- **equal** to a multiple of the dimension of the cross section of a smoking article (S), increased by a space that is smaller than half the dimension of the cross section of a smoking article (feature h)).

Since figure 1 of D2 is schematic no relative dimensions can be extracted therefrom, in particular also since the description of D2 lacks of any disclosure or hints towards feature h).

In this context the applicant argued that the arguments of the respondent could only show that the presence of feature h) in the hopper disclosed in D2 was probable, but were not sufficient for concluding beyond doubt that this feature was present, and therefore directly and unambiguously disclosed.

- 1.3 The board finds that even if the claim interpretation proposed by the appellant is followed, the subject-matter of claim 1 still lacks novelty.

Specifically, even accepting that:

- cross sections must be measured perpendicular to the flow direction;
- the cross section of a smoking article is measured perpendicular to its longitudinal axis;
- the specific dimensional relationship in feature h) must be between these properly measured cross sections;

D2 still discloses features f), g) and h) for the following reasons.

1.3.1 *Features f) and g)*

Independent claim 1 of the main request relates to a hopper for smoking articles comprising specific structural elements, including a connection portion with two parts of different cross-sectional dimensions.

However the definition of this connection portion is broad and does not contain any limitation specifying the position of the first part within the connection portion.

The claim merely establishes a relative dimensional relationship between said first part and a second part of the connection portion, with the additional constraint that the second part is adjacent and downstream with respect to the first part in the output direction.

Figure 1 of document D2 shows that the area between the wall 8 and the roller 29 forms a connection portion with a variable cross-section (see also figure above).

As the cross section of this connection portion varies gradually, a first part thereof can be identified, downstream and close to the constriction at the narrowest point between wall 8 and roller 29 but not exactly corresponding thereto, which is smaller than the cross-section of the channel immediately downstream.

The part of the connection portion which is adjacent and downstream with respect this first part then corresponds to the claimed second part of the connection portion.

The board notes that the appellant has not provided any specific argument according to which the term "adjacent" used in feature f) of claim 1 should be understood otherwise than with its normal meaning of e.g. "next to", as disclosed in figure 1 of D2.

As also appearing in the annotated version of part of figure 1 of D2 submitted during oral proceedings (see above), this second part ("second portion" in said annotated figure) is adjacent and downstream with respect to the first part ("first portion" in said annotated figure) in the output direction (feature f)) and the cross section of the first part is smaller than the cross section of the second part such that the channel formed between them widens in the output direction, as required by feature g).

1.3.2 *Feature h)*

Feature h) is also disclosed in D2 for the following reasons.

While figure 1 of D2 has a schematic nature, it clearly conveys the technical teaching that the hopper, in use, is full of smoking articles in contact with each other (see also column 2, line 58).

As already discussed above, claim 1 is broadly formulated and does not specify the position of the first part of the connection portion.

Due to the continuous nature of the dimensional variation caused by the curved surface of roller 29 relative to the straight wall 8 the board is convinced that there **inevitably** exists a cross section still in the first part of the connection portion of D2 as

defined under point 1.3.1 above, downstream and close to the constriction at the narrowest point between wall 8 and roller 29 but not exactly corresponding thereto, at which the dimension of the cross-section equals a multiple of the smoking article cross-section dimension plus a space smaller than half the smoking article cross-section dimension.

In other words there inevitably exists a position where the cross-sectional dimension of the first part of the connection portion in D2 satisfies the specific relationship to the smoking article dimensions required by feature h).

This is all the more true since, as put forward by the respondent at the oral proceedings before the board

- the flow direction of the smoking articles in D2 depends on how it is measured in the hopper of figure 1 having in mind that, in use, the smoking articles interact between themselves in an unpredictable manner when falling, such that the dimension of the cross section of the first part of the connection portion to be measured perpendicular to said flow direction may vary in an undefined way and
- the skilled person would consider that the dimensions of the smoking articles in D2 may also vary, at least to some extent.

The above shows that, contrary to the appellant's contention, the subject-matter of claim 1 is directly and unambiguously derivable from D2 by the skilled person.

As a consequence of the above, the main request cannot be allowed (Articles 54(1) and (2) EPC).

2. First auxiliary request

2.1 The opposition division found that as the features added to claim 1 of the first auxiliary request with respect to claim 1 of the main request were also disclosed in D2, the subject-matter of claim 1 of the first auxiliary request also lacks novelty (decision under appeal, point II.2.2).

2.2 The appellant argued in writing (statement of grounds, point 2.2, page 30) that these additional features overcome the novelty objection because the position of the first part of the connection portion is now more precisely defined, i.e. between a lateral wall and a corresponding wall of an unloading element.

2.3 The board is not convinced that the additional feature is new with respect to the disclosure of D2, because, as explained by the respondent (see reply to the statement of grounds, part D.II) also in D2 the first part of the connection portion is defined between a lateral wall (wall 8) of the connection portion and at least a corresponding wall of the unloading element (roll 29). As a result, the subject-matter of claim 1 of auxiliary request 1 lacks novelty over D2 (Articles 54(1) and (2) EPC).

Therefore, leaving the admissibility issues raised by the respondent aside (see section D.I of the reply), the first auxiliary request cannot be allowed.

3. Second auxiliary request

3.1 The opposition division took the reasoned, discretionary decision not to admit the second

auxiliary request, filed during the oral proceedings, into the opposition proceedings (decision under appeal, point II.3.1).

- 3.2 The second auxiliary request is not admitted into the appeal proceedings because according to Article 12(6) RPBA the board shall not admit **requests which were not admitted** in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

Since the appellant (statement of grounds, points 3.1 and 3.2) failed to provide any reasons on why the discretionary decision of the opposition division not to admit the request was erroneous, and also did not provide any reasons why the circumstances of the appeal case would justify the admittance of this auxiliary request into the appeal proceedings, the board sees no reason to overturn the discretionary decision of the opposition division and to admit the second auxiliary request into the appeal proceedings.

4. Third auxiliary request

- 4.1 The opposition division found that the features added to claim 1 of the third auxiliary request with respect to claim 1 of the main request were also disclosed in D2 (decision under appeal, point II.4.1).

- 4.2 In the statement of grounds of appeal, page 32, the appellant contested the findings of the opposition division on lack of novelty only as follows:

"The added features are not disclosed nor in document D1, nor in document D2 and contribute to solve the technical problem to avoid the formation of "bridges" of smoking articles between an output mouth and the other (see paragraph [0022] of the B1 publication)."

- 4.3 Taking the above argument of the appellant into account the board considers that the objection of lack of substantiation raised by the respondent against the admittance of auxiliary request 3 into the appeal proceedings is justified.

This is because the appellant did not provide any concrete explanation on why the subject-matter of claim 1 of the third auxiliary request is new, taking into account the finding of the opposition division that the subject-matter of claim 1 was disclosed in D2, as explained in the decision under appeal, see in particular paragraph bridging pages 9 and 10.

As this auxiliary request is not self-explanatory and the reasons given by the decision under appeal appear convincing, it cannot be incumbent on the board (all the more not on the respondent) to formulate arguments against the reasoned findings of the opposition division.

Under Article 12(3) RPBA the statement of grounds of appeal shall contain the appellant's complete case, setting out clearly the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on.

Since for the reasons given above the requirements of Article 12(3) RPBA are not fulfilled, the board does

not admit this unsubstantiated third auxiliary request into the appeal proceedings under Article 12(5) RPBA (Case Law of the Boards of Appeal, 11th Edition 2025, V.A.4.3.5b) (i)).

5. Fourth and fifth auxiliary requests

5.1 The fourth and fifth auxiliary requests were found to contain an unallowable intermediate generalisation of the hopper disclosed on page 5, lines 25 to 28, of the original description, and were therefore not allowed by the opposition division (decision under appeal, points II.5.2 and II.6).

This was because claim 1 of the fourth and fifth auxiliary requests had been amended in such a manner that they provide a new technical teaching to the skilled person of an originally non-disclosed embodiment (called "embodiment X" in the decision under appeal in which two unloading elements are placed between the **same** couple of output mouths, due to the absence of any reference to figures 1 to 3 in contrast to the original description where the feature is deemed to be based (page 5, lines 26 to 28)).

5.2 When discussing the compliance of the amendments made to these auxiliary requests during the written proceedings (statement of grounds, points 5.1 and 6.1) the appellant referred again to page 5, lines 25 to 28, of the original description as the basis for said amendments, without however discussing any issue related to the unallowable intermediate generalisation identified by the opposition division.

5.3 The written arguments of the appellant do not convincingly show that the decision under appeal on the

fourth and fifth auxiliary requests is not correct, already because the issue of the intermediate generalisation, on which the refusal of these requests was based, has not been addressed.

The board, following the reasoning of the decision under appeal, sees therefore no reason for concluding that the requirements of Article 123(2) EPC are satisfied by these two requests.

As the consequence of that, the fourth and fifth auxiliary requests are not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated