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**Datasheet for the decision  
of 17 April 2026**

**Case Number:** T 0431/24 - 3.5.01

**Application Number:** 15894110.4

**Publication Number:** 3289894

**IPC:** A24F47/00, A61M15/06

**Language of the proceedings:** EN

**Title of invention:**  
NON-COMBUSTION FLAVOR INHALER

**Patent Proprietor:**  
JAPAN TOBACCO INC.

**Opponent:**  
Philip Morris Products S.A.

**Headword:**  
Non-combustion flavor inhaler/JAPAN TOBACCO

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
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Case Number: T 0431/24 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 17 April 2026**

**Appellant:** JAPAN TOBACCO INC.  
(Patent Proprietor) 2-1, Toranomon 2-chome  
Minato-ku  
Tokyo 105-8422 (JP)

**Representative:** Hoffmann Eitle  
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81925 München (DE)

**Appellant:** Philip Morris Products S.A.  
(Opponent) Quai Jeanrenaud 3  
2000 Neuchâtel (CH)

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

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted/  
electronically transmitted on 22 January 2024  
concerning maintenance of the European Patent  
No. 3289894 in amended form.**

**Composition of the Board:**

**Chairwoman** I. Kürten  
**Members:** R. Moser  
C. Schmidt

## **Summary of Facts and Submissions**

- I. The patent proprietor and the opponent each lodged an appeal against the interlocutory decision of the opposition division maintaining the patent in amended form on the basis of auxiliary request 40.
- II. The parties were summoned to oral proceedings before the Board. In a communication pursuant to Article 15(1) RPBA, the Board set out its provisional opinion.
- III. By letter of 26 March 2026, the patent proprietor submitted the following statement:

"We hereby withdraw our appeal and all our requests on file including our request for oral proceedings.

We request that the opposed patent is revoked without going into substantive issues (T 186/84) as the patentee no longer approves of the text of the patent as granted nor of the text of the patent as maintained by the Opposition Division with the interlocutory decision of January 22, 2024, and the patentee does not intend to submit any other text for the maintenance of the patent."
- IV. By letter dated 10 April 2026, the opponent stated that "we look forward to receiving your confirmation that the in-person oral proceedings on 23 April 2026 have been cancelled".
- V. The oral proceedings were subsequently cancelled.

### **Reasons for the Decision**

1. Under Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor of the patent.
  
2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent as granted or as maintained and withdraws all pending requests.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, IV.D.2).

### **Order**

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

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

The Registrar:

The Chairwoman:



T. Buschek

I. Kürten

Decision electronically authenticated