

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 17 October 2025**

Case Number: T 0435/24 - 3.2.04

Application Number: 19153728.1

Publication Number: 3498115

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.

Opponent:
Nicoventures Trading Limited

Headword:

Relevant legal provisions:
EPC Art. 100(c), 76(1)

Keyword:
Grounds for opposition - added subject-matter (yes)
Divisional application - subject-matter extends beyond content
of earlier application (yes)

Decisions cited:

G 0002/10

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0435/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 17 October 2025

Appellant: Juul Labs International Inc.
(Patent Proprietor) 1000 F Street NW
Washington DC 20004 (US)

Representative: Thum, Bernhard
Thum & Partner
Thum Mötsch Weickert
Patentanwälte PartG mbB
Siebertstr. 6
81675 München (DE)

Respondent: Nicoventures Trading Limited
(Opponent) Globe House
1 Water Street
London WC2R 3LA (GB)

Representative: D Young & Co LLP
3 Noble Street
London EC2V 7BQ (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 March 2024
revoking European patent No. 3498115 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 proprietor appeals the decision of the opposition division to revoke their patent.
- II. The division held inter alia that claim 1 of the main request (granted claims) and of auxiliary requests 2-58 extended beyond the content of the grandparent application as filed, while it did not admit auxiliary request 1 and revoked the patent.
- III. In preparation for oral proceedings the Board issued a written communication setting out its preliminary view on the relevant issues.

Oral proceedings were held in-person before the Board on 17 October 2025.

- IV. The appellant proprietor requests that the decision under appeal be set aside and the patent maintained as granted (main request) or to maintain the patent according to one of auxiliary requests 1 to 58, 21a to 21c, 22b, 31b, 32b, 33b, 34b, 35b, 39a to 39c, 42a to 42c, 56a to 56c, 57a to 57c, 58a to 58c, filed with the statement of grounds.

The respondent opponent requests that the proprietor's appeal be dismissed.

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

(a) Main request (as granted)

"A cartridge (30, 30a) for a device for generating an inhalable aerosol, wherein the cartridge comprises: a fluid storage compartment (32); a heater (36) affixed to a first end of the fluid storage compartment; and a mouthpiece (31) affixed to a second end of the fluid storage compartment, wherein the heater comprises a first condensation chamber (45) and the mouthpiece comprises a second condensation chamber (46), and wherein the first end of the cartridge is enclosed and wherein the enclosed end of the cartridge includes the heater and the fluid storage compartment (32)."

(b) Auxiliary request 1 (Amendment A1)

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

"...wherein the first end of the cartridge is enclosed by the heater and wherein the enclosed end of the cartridge includes the heater and 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):

"...and wherein the enclosed end of the cartridge includes the heater and the fluid storage compartment (32), wherein the heater encloses the first end of the cartridge and the first end of the fluid storage compartment."

(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) attached to a first end of the cartridge, wherein the heater (36) is affixed to a first end of the fluid storage compartment;
and a mouthpiece (31) attached to a second end of the cartridge, wherein the mouthpiece (31) is affixed to a second end of the fluid storage compartment,..."

(e) Auxiliary request 4 (Amendment A4)

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

"...a heater (36) attached to a first end of the cartridge, wherein the heater (36) is affixed to a first end of the fluid storage compartment with a snap-fit coupling;
and a mouthpiece (31) attached to a second end of the cartridge, wherein the mouthpiece (31) is affixed to a second end of the fluid storage compartment,..."

(f) Auxiliary request 5 (Amendment A5)

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

"...wherein the enclosed end of the cartridge includes the heater and the fluid storage compartment (32),
wherein the mouthpiece encloses the second end of the cartridge and the second end of the fluid storage compartment."

(g) Auxiliary request 6 (Amendment A6)

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

"...wherein the enclosed end of the cartridge includes the heater and the fluid storage compartment (32), wherein the second end of the cartridge with the mouthpiece (31) is configured to be exposed when the cartridge is inserted in the device."

(h) Auxiliary request 7 (Amendment A7)

According to Amendment A7 granted claim 5 is deleted entirely and the further dependent claims are adapted.

(i) Auxiliary request 8 (Amendment A8)

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

"A device for generating an inhalable aerosol, the device comprising:
a cartridge (30, 30a), ~~for a device for generating an inhalable aerosol,~~ wherein the cartridge comprises:
...;
and
a device body comprising a cartridge receptacle (21), wherein the cartridge is detachable and wherein the cartridge receptacle and the detachable cartridge form a separable coupling."

(j) Auxiliary request 9 (Amendment A9)

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

"A device for generating an inhalable aerosol, the device comprising:
a cartridge (30, 30a), ~~for a device for generating an inhalable aerosol,~~ wherein the cartridge comprises:
...;
and
a device body comprising a cartridge receptacle (21), wherein the cartridge is detachable and wherein the cartridge receptacle and the detachable cartridge form a separable coupling; and
wherein the separable coupling comprises one of a friction assembly and a snap-fit assembly, a snap-lock assembly, and a magnetic assembly."

(k) Auxiliary request 10 (Amendment A10)

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

"A device for generating an inhalable aerosol, the device comprising:
a cartridge (30, 30a), ~~for a device for generating an inhalable aerosol,~~ wherein the cartridge comprises:
...;
and
a device body comprising a cartridge receptacle (21), wherein the cartridge is detachable and wherein the cartridge receptacle and the detachable cartridge form a separable coupling; and
wherein the separable coupling comprises a magnetic assembly."

(1) Auxiliary requests 11-58

Claim 1 of these requests corresponds to that of the main request (as granted) with the addition of the amendments A1-A10 in different combinations 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 A1 and A3.

Auxiliary Request 13 is based on a combination of amendments A1 and A4.

Auxiliary request 14 is based on a combination of amendments A1 and A5.

Auxiliary request 15 is based on a combination of amendments A1 and A6.

Auxiliary request 16 is based on a combination of amendments A1 and A7.

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

Auxiliary request 18 is based on a combination of amendments A1 and A9.

Auxiliary request 19 is based on a combination of amendments A1 and A10.

Auxiliary request 20 is based on a combination of amendments A1, A2 and A3.

Auxiliary request 21 is based on a combination of amendments A1, A2 and A4.

Auxiliary request 22 is based on a combination of amendments A1, A2 and A5.

Auxiliary request 23 is based on a combination of amendments A1, A2 and A6.

Auxiliary request 24 is based on a combination of amendments A1, A2 and A7.

Auxiliary request 25 is based on a combination of amendments A1, A2 and A8.

Auxiliary request 26 is based on a combination of amendments A1, A2 and A9.

Auxiliary request 27 is based on a combination of amendments A1, A2 and A10.

Auxiliary request 28 is based on a combination of amendments A1, A2, A3 and A5.

Auxiliary request 29 is based on a combination of amendments A1, A2, A3 and A6.

Auxiliary request 30 is based on a combination of amendments A1, A2, A3 and A7.

Auxiliary request 31 is based on a combination of amendments A1, A2, A3 and A8.

Auxiliary request 32 is based on a combination of amendments A1, A2, A3 and A9.

Auxiliary request 33 is based on a combination of amendments A1, A2, A3 and A10.

Auxiliary request 34 is based on a combination of amendments A1, A2, A3, A5 and A6.

Auxiliary request 35 is based on a combination of amendments A1, A2, A3, A5 and A7.

Auxiliary request 36 is based on a combination of amendments A1, A2, A3, A5 and A8.

Auxiliary request 37 is based on a combination of amendments A1, A2, A3, A5 and A9.

Auxiliary request 38 is based on a combination of amendments A1, A2, A3, A5 and A10.

Auxiliary request 39 is based on a combination of amendments A1, A2, A4, and A5.

Auxiliary request 40 is based on a combination of amendments A1, A2, A4, and A6.

Auxiliary request 41 is based on a combination of amendments A1, A2, A4, and A7.

Auxiliary request 42 is based on a combination of amendments A1, A2, A4, and A8.

Auxiliary request 43 is based on a combination of amendments A1, A2, A4, and A9.

Auxiliary request 44 is based on a combination of amendments A1, A2, A4, and A10.

Auxiliary request 45 is based on a combination of amendments A1, A2, A4, A5 and A6.

Auxiliary request 46 is based on a combination of amendments A1, A2, A4, A5 and A7.

Auxiliary request 47 is based on a combination of amendments A1, A2, A4, A5 and A8.

Auxiliary request 48 is based on a combination of amendments A1, A2, A4, A5 and A9.

Auxiliary request 49 is based on a combination of amendments A1, A2, A4, A5 and A10.

Auxiliary request 50 is based on a combination of amendments A1, A2, A4, A6 and A8.

Auxiliary request 51 is based on a combination of amendments A1, A2, A4, A6 and A9.

Auxiliary request 52 is based on a combination of amendments A1, A2, A4, A6 and A10.

Auxiliary request 53 is based on a combination of amendments A1, A2, A4, A7 and A8.

Auxiliary request 54 is based on a combination of amendments A1, A2, A4, A7 and A9.

Auxiliary request 55 is based on a combination of amendments A1, A2, A4, A7 and A10.

Auxiliary request 56 is based on a combination of amendments A1, A2, A4, A5, A7 and A8.

Auxiliary request 57 is based on a combination of amendments A1, A2, A4, A5, A7 and A9.

Auxiliary request 58 is based on a combination of amendments A1, A2, A4, A5, A7 and A10.

(m) Auxiliary requests 21a to 21c, 22b, 31b, 32b, 33b, 34b, 35b, 39a to 39c, 42a to 42c, 56a to 56c, 57a to 57c, 58a to 58c

Auxiliary requests marked with the letter "a" are based on the corresponding numbered request but include Amendment A4a instead of Amendment A4.

Requests marked with the letter "b" are based on the corresponding numbered request and additionally include Amendment A3a.

Requests marked with the letter "c" are based on the corresponding numbered request and include both Amendment A3a and Amendment A4a in place of Amendment A4.

Amendment A3a

Claim 1 amended to include the following features at the end of the claim (emphasis by the Board)

"...wherein the fluid storage compartment (32) of the cartridge is formed as a tank,
wherein the heater comprises a fluid wick (34),
wherein the heater comprises a resistive heating element (35) in contact with the fluid wick (34),
wherein the heater comprises exposed heater contact tips (33a) on heater contacts (33),
and wherein the heater comprises a heater chamber (37) which is in fluid communication with the first condensation chamber (45)."

Amendment A4a

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

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

first end of the fluid storage compartment with a snap-fit coupling;
and a mouthpiece (31) attached to a second end of the cartridge, wherein the mouthpiece (31) is affixed to a second end of the fluid storage compartment with a snap-fit coupling,..."

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

WO 2015/100361 A1 grandparent application

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 refers 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 vaporizable material, which is vaporized to produce an aerosol vapour that delivers an active ingredient to the user.

2. Main request - Added subject-matter (section 4.3 of the appealed decision)

2.1 The opposition division held that granted claim 1 contained added subject-matter extending over the contents of the grandparent application as filed (WO 2015/100361 A1), contrary to Art 100(c) EPC. The appellant proprietor challenges this finding. However, the Board shares the opposition division's view that there is no direct and unambiguous disclosure in the grandparent application of the specific combination of features of granted claim 1 (section 4.3 of the appealed decision).

In the following discussion, references to PCT or to original application, disclosure, claim, description or drawings refer to the grandparent application as published as WO 2015/100361 A1.

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 appellant proprietor identifies original claim 149, or equivalently paragraphs 0042 and 00249 basically reproducing the text of original claim 149, as the

starting point for the feature combination of granted claim 1. Original claim 149 reads as follows:

149. A cartridge for a device for generating an inhalable aerosol comprising:
a fluid storage compartment;
a heater affixed to a first end; and
a mouthpiece affixed to a second end;
wherein the heater comprises a first condensation chamber and the mouthpiece comprises a second condensation chamber.

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

- the first end is the first end of the fluid storage compartment
- the second end is the second end of the fluid storage compartment
- the first end of the cartridge is enclosed
- the enclosed end of the cartridge includes the heater and the fluid storage compartment.

2.4 Although 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.

2.5 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'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.

2.6 Accordingly, the Board is not convinced by the appellant proprietor's arguments that no added subject-matter arises because original claim 149, or original

paragraphs 0042 and 00249, already refer to the standard key components of the cartridge, namely the fluid storage compartment, the heater and the mouthpiece, which are merely only further specified by the claim amendments made during the examination proceedings.

The appellant proprietor submits that the amendments corresponding to features 1.7 and 1.8 - namely that the first end of the cartridge is enclosed, and that the enclosed end includes the heater and the fluid storage compartment - are based on paragraph 00178 of the original description. They argue that paragraph 00178 substantially overlaps in features with original claim 149, such that the skilled person would consider this paragraph as providing additional information on the geometric arrangement of the cartridge's standard key components defined in that claim, and thus as possible further limitations to its embodiments.

Original paragraph 00178 reads:

"In some embodiments of the device, as illustrated in FIG. 9, the heater may encloses at least a first end of the cartridge. The enclosed first end of the cartridge may include the heater and the interior fluid storage compartment. In some embodiments, the heater further comprises at least one first condensation chamber 45."

However, the Board considers that it is not directly and unambiguously derivable from the original application that the limitations described in paragraph 00178 relate to a particular embodiment of the subject-matter defined in original independent claim 149. Paragraph 00178 does not disclose all the features of claim 149. In particular, it neither specifies nor

requires that the heater is affixed to a first end, let alone to the first end of the fluid storage compartment as now claimed. It therefore cannot be regarded as describing directly and unambiguously an embodiment of claim 149. The embodiment of paragraph 00178 is disclosed amid numerous optional features and embodiments presented throughout the description, with no clear indication of their intended combinations, as discussed above.

Accordingly, there is no direct and unambiguous disclosure of a combination of the features of original claim 149 with those of paragraph 00178 of the PCT application, and hence no direct and unambiguous disclosure of the combination of features defined in granted claim 1 in this respect.

2.7 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. The embodiment of Figures 5 to 12 includes, in addition to the features of claim 1, numerous further aspects disclosed in the figures and corresponding description. There is no indication directing the skilled person clearly and unambiguously to the specific combination of features defined in the granted claim. The figures merely illustrate a configuration comprising additional structural and functional elements without establishing a direct conceptual link to the claimed combination.

2.8 Finally, the appellant-proprietor 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 also set out in decision **G1/24**. This argument is likewise not convincing.

The UPC decision cited by the proprietor (UPC_CoA_382/2024 - Abbot v. Sibio) 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 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, the appellant has not provided any convincing argument that the claimed feature combination constitutes a technical teaching which the skilled person can derive from the original application as an embodiment of the invention. The appellant submits that all features serve the same underlying purpose - namely, the improvement of electronic inhalable aerosol devices (see original application, paragraph 0002) - and that this common purpose reflects the overall teaching, or that all features are intended to form part of the cartridge as envisaged by the invention. This argument is not persuasive. The cited teachings are of a very general nature and apply broadly to the entire disclosure and all cartridge features, rather than specifically to those selected for granted claim 1. Such broad teachings do not allow the skilled person to single out the specific combination of features defined in that claim as an intended embodiment of the original application.

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 features which was selected is as such to be directly and unambiguously derivable from the application documents of the earlier application.

2.9 Therefore, the appellant proprietor has not been able to convincingly indicate to the Board any direct and unambiguous basis for the combination of features of granted claim 1. The Board thus confirms the opposition division's conclusion that granted claim 1 contains added subject-matter.

3. Auxiliary requests

In regard of the Auxiliary requests, the Board noted in its written communication the following:

"6. Auxiliary requests 1-58 and 39a

.../...

6.3 Yet, none of the auxiliary requests appear to overcome the added subject-matter objection regarding the arbitrary aggregation of features (section 4.3 of the decision), as concluded by the division in sections 7-64 for auxiliary requests 1-58 and in the prima facie assessment of section 6.4.2 for auxiliary request 39a.

They represent different combinations of amendments A1-A10 and A4a discussed in sections VIII. 3.3 and VIII. 3.4 of the appellant's grounds. Amendments A1, A2 attempt to address the objection of section 4.5 of the appealed decision related to the heater and mouthpiece affixed to the fluid storage compartment, while amendments A3, A4, A4a seek to address the objection corresponding to section 4.5, enclosure of the first end of the cartridge. Amendments A5-A10, except A7, add features to overcome novelty or inventive step objections. A7 corresponds to the deletion of claim 5.

6.4 Regarding auxiliary request 39a, the appellant's arguments on pages 62-63 that this request addresses the added subject-matter objection of the arbitrary aggregation of features are not convincing. The appellant does not convincingly point to a basis in the original application for the specific combination of features claimed. They reference various sections of the description, which present these features in different contexts and in conjunction with other interrelated features.

7. New auxiliary requests 21a to 21c, 22b, 31b, 32b, 33b, 34b, 35b, 39a to 39c, 42a to 42c, 56a to 56c, 57a to 57c, 58a to 58c.

.../...

7.4 Regarding the issue of added subject-matter, the new requests involve different combinations of amendments A1-A10 and A4a, plus the additional amendment A3a.

As addressed earlier, the combination of amendments A1-A10 and A4a does not overcome the added subject-matter objection related to the arbitrary aggregation of features (section 4.3 of the decision). Combinations that include amendment A3a, discussed by the appellant in sections VIII.3.3 (see table) and VIII.3.4.d, also do not appear to overcome this objection. As argued by the respondent opponent in section C.3.4a.1 of their reply, the proprietor refers to various paragraphs of the original disclosure, suggesting that the amendment is consistently applied across these paragraphs. It however appears from the cited passages that amendment A3a rather consists of multiple discrete amendments

derived from a range of disparate and non-linked paragraphs."

The above was commented by none of the parties. Absent any further submissions and after reviewing its preliminary opinion, the Board sees no reason to change its findings. The Board thus concludes that none of the auxiliary requests overcomes the issue of added subject-matter of the main request, Art 76(1) EPC.

4. Right to be heard, principle of equal treatment of the parties
- 4.1 For the sake of completeness, the Board wishes to address the appellant proprietor's submissions (see section IV.1 of the grounds of appeal, more in particular sub-section IV.1.5 and IV.1.6) that the opposition division violated the principle of equality of arms, i.e. equal treatment of the parties, and did not comply with Art. 113(1) EPC (right to be heard).
- 4.2 However, in the Board's view, there is no violation of the appellant proprietor's right to be heard or the principle of equality of arms by the opposition division.

The added subject-matter objection regarding arbitrary aggregation of features 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 no preliminary opinion on this issue was provided by the opposition division before the oral proceedings, which might have assisted in preparing a response, such as the filing of auxiliary requests. However, the opposition division is under no obligation to issue a preliminary opinion. To the extent that the proprietor was surprised during the oral proceedings or required additional time to prepare auxiliary requests, this was addressed: as recorded in the minutes, the proprietor requested a break to formulate a new auxiliary request, and the opposition division granted this request (see minutes, page 6, first five paragraphs). To the extent that the proprietor may have required further time in the form of an adjournment, no such request was made. The minutes contain no indication of any request for adjournment (see in this respect CLB, IV.C.6.1: Principle of equal treatment).

- 4.3 The Board 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