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Datasheet for the decision of 17 August 2026

Case Number: T 0935/24 - 3.5.01

Application Number: 17701062.6

Publication Number: 3410876

IPC: A24F47/00

Language of the proceedings: EN

Title of invention:
AEROSOL-GENERATING DEVICE HAVING MULTIPLE POWER SUPPLIES

Patent Proprietor:
Philip Morris Products S.A.

Opponent:
JT International S.A.

Headword:
Aerosol-generating device with multiple power supplies/PHILIP MORRIS PRODUCTS

Relevant legal provisions:
EPC Art. 54(2), 56
RPBA 2020 Art. 12(6)

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It can be changed at any time and without notic

Keyword:
Novelty - main request (no)
Inventive step - auxiliary request 1 to 3 (no)
Admittance of non-admitted claim request - auxiliary request 4 (no - no error in use of discretion at first instance)

Decisions cited:
T 1662/21

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Case Number: T 0935/24 - 3.5.01

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

Appellant: (Patent Proprietor)	Philip Morris Products S.A. Quai Jeanrenaud 3 2000 Neuchâtel (CH)
Representative:	Abitz & Partner Postfach 86 01 09 81628 München (DE)
Respondent: (Opponent)	JT International S.A. 8 rue Kazem Radjavi 1202 Geneva (CH)
Representative:	dompatent Partnerschaft von Patentanwälten und Rechtsanwälten mbB Deichmannhaus am Dom Bahnhofsvorplatz 1 50667 Köln (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 8 May 2024 concerning maintenance of the European Patent No. 3410876 in amended form.**

Composition of the Board:

Chairwoman	A. Wahrenberg
Members:	I. Kürten
	D. Rogers

Summary of Facts and Submissions

I. The appeal by the patent proprietor is directed against the interlocutory decision of the opposition division to maintain the European patent No. 3 410 876 in amended form on the basis of auxiliary request 5 with claims filed on 21 December 2023.

The opponent also filed an appeal but withdrew it by letter dated 30 August 2024. It therefore has the status of respondent.

II. The following documents are relevant to the present decision:

D10: US 2014/0000638 A1
D19: "Electrical Circuit Theory and Technology", J. Bird, 5th edition, Routledge, 2014, pages 67-68

III. In its statement of grounds of appeal, the patent proprietor requested that the decision under appeal be set aside and that the patent be maintained based on the main request or, alternatively, one of auxiliary requests 1 to 9, all filed in the first-instance proceedings and re-filed with the grounds of appeal.

In its reply to the appeal, the opponent requested that the appeal be dismissed and that all claim requests submitted by the appellant be rejected.

IV. The Board summoned the parties to oral proceedings to be held on 13 October 2026. In the communication under Article 15(1) RPBA accompanying the summons, the Board

set out its preliminary opinion that the appeal was likely to be dismissed. It indicated, *inter alia*, that claim 1 of the main request appeared to lack novelty over D10, that claim 1 of auxiliary requests 1 to 3 appeared not to involve an inventive step in view of D10, and that it was minded not to admit auxiliary request 4. As regards auxiliary request 5, on the basis of which the opposition division had maintained the patent, the Board indicated that, in view of the prohibition of *reformatio in peius*, the patent could not be maintained in a less favourable version.

V. By letter dated 23 July 2026, the proprietor withdrew its request for oral proceedings and requested a decision in writing based on the current state of the file.

By letter dated 4 August 2026, the opponent stated that its sole request was that the appeal be dismissed. It also withdrew its request for oral proceedings and requested a decision in writing, provided that the Board dismissed the appeal in line with its preliminary opinion.

VI. The oral proceedings were subsequently cancelled.

VII. Claim 1 of the **main request** reads as follows (feature labelling as used in the grounds of appeal):

F1 An aerosol-generating device (12) comprising:

F2 at least one electric heater (32);
F3 a first power supply (18)
F3.1 configured to supply electrical energy only to the at least one electric heater (32),

F3.2 wherein the first power supply (18) is a rechargeable first power supply;

F4 a controller (28)

F4.1 configured to control the supply of electrical energy from the first power supply (18) to the at least one electric heater (32); and

F5 a second power supply (20)

F5.1 configured to supply electrical energy to the controller (28) and

F6 wherein each one of the first and second power supplies (18, 20) is a battery,

or

F7 wherein the device (12) comprises an additional power supply

F7.1 configured to recharge the rechargeable first power supply (18).

VIII. Claim 1 of **auxiliary request 1** differs from claim 1 of the main request in that features F7 and F7.1 have been deleted.

IX. Claim 1 of **auxiliary request 2** differs from claim 1 of the main request in that feature F6 has been deleted and the following wording has been added at the end of feature F7.1:

"wherein the additional power supply comprises a third power supply (22)."

X. Claim 1 of **auxiliary request 3** is based on claim 1 of auxiliary request 2. It further adds, after feature F1:

"a housing (14) defining an internal compartment (16), the aerosol-generating device (12) further comprising"

It further adds at the end of the claim:

"wherein the first power supply (18), the second power supply (20), the third power supply (22), the controller (28) and the electric heater (32) are all positioned within the internal compartment."

XI. Claim 1 of **auxiliary request 4** is based on claim 1 of auxiliary request 2. It adds, after feature F1:

"a cavity (34) for receiving an aerosol-generating article (40) comprising a solid aerosol-forming substrate (42);"

and, after feature F2:

"wherein the at least one electric heater (32) comprises a substantially annular heater configured to surround at least a portion of the aerosol-generating article (40) when the aerosol-generating article (40) is received within the cavity (34);".

Reasons for the Decision

Main request - novelty

1. Although the opponent had raised an objection of lack of novelty against the subject-matter of claim 1 of the main request during the opposition proceedings, the opposition division did not decide on this objection, having found that the main request did not comply with Rule 80 EPC. It did, however, address the substance of the objection when assessing auxiliary requests 1 and 2, which respectively incorporated the first and second

alternatives of claim 1 of the main request. The two alternatives differ in the requirements specified after feature F5.1: the first alternative includes feature F6, while the second alternative includes features F7 and F7.1.

The Board therefore considers it appropriate to examine the novelty of claim 1 of the main request over D10. In agreement with the opposition division, it considers that D10 discloses features F1 to F5.1, F7, and F7.1. Accordingly, the second alternative in claim 1 is not new (Article 54(2) EPC).

2. D10, like the claimed invention, describes an aerosol-generating device (see Figure 1) with a heating element 50 and controller 20 (features F1, F2, F4, F4.1). It further discloses a capacitor powering the heating element (corresponding to the first power supply in features F3.1 and F3.2) and a battery that charges the capacitor and powers other electronic components (corresponding to the second power supply in features F5 and F5.1; see [0033]).

As regards features F7 and F7.1, these require an *additional* power supply for recharging the first one. In its assessment of auxiliary request 2, the opposition division considered the inductive receiving means implied by paragraph [0032] of D10 to constitute such an additional power supply (see also points 17. and 18. below). However, as granted claim 7 and paragraph [0009] make it clear, the additional power supply may be the second power supply. Therefore, the battery in D10, which recharges the capacitor (first power supply; [0033]), corresponds to both the second power supply and the additional power supply.

3. The appellant argued that the term "power supply" should be interpreted as a "power source", specifically as "*an active source of electrical power that is able to generate and provide sufficient electrical power to operate an aerosol-generating device in more than just a transient way*", which would exclude passive components like capacitors.

4. The Board, however, agrees with the opposition division (decision, point 2) that this definition is unduly narrow and not supported by the claim language or the description. It imposes functional requirements that are neither disclosed nor implied in the patent, and may even be misleading. For example, batteries - explicitly disclosed in the patent as examples of "power supplies" - do not generate energy but simply store and release it.

As set out in the decision (point 2), "power supply" is not necessarily synonymous with "power source". In common technical usage, a "power supply" is a device that receives energy from an energy source and delivers it to a load, often converting its form. The source itself need not be part of the power supply.

The capacitor disclosed in D10 (notably the supercapacitor in [0033]) fits this definition and also meets the claim's functional requirements: it is rechargeable, powers the heater, and is distinct from the second power supply (the battery in [0033]). Therefore, it fully anticipates the claimed first power supply.

5. Accordingly, claim 1 is not new (Article 54(2) EPC).

Auxiliary request 1 - inventive step

6. Claim 1 of this request comprises features F1 to F6 and thus deletes the second alternative of claim 1 of the main request.

7. The Board agrees with the opposition division (decision, point 4.4) that claim 1 lacks an inventive step (Article 56 EPC) over D10 in light of the skilled person's common general knowledge, as illustrated by D19.

8. It is common ground that claim 1 differs from D10 only in that it requires both the first and second power supplies to be batteries (feature F6), whereas in D10 only the second power supply is a battery and the first is a (super)capacitor.

9. The patent proprietor argued that this difference achieved the effect stated in paragraph [0007] of the patent, namely improved control and reliability of operation of the aerosol-generating device.

10. The Board notes, however, that paragraph [0007] attributes this effect to the separation of the heater's power supply from that of the controller, rather than to the use of two batteries (see also the opponent's reply, page 12, last paragraph; and the decision under appeal, point 4.4.10). The patent does not indicate any advantage of using two batteries compared to other types of power supply.

Moreover, claim 1 does not require a functional separation between the first and second power supplies: the second battery is not limited to powering the

controller. It is within the claim's scope that the second battery recharges the first one.

11. Hence, the Board agrees with the opponent that the technical problem is to provide an alternative type of rechargeable power supply for the heater.

12. The patent proprietor argued that the skilled person would have had no motivation to replace the (super)capacitor in D10 with a battery. In its view, D10 taught enhancing power delivery to the heater by using a capacitor, which would discourage its replacement with a battery. It further contended that D19 likewise provided no incentive for such a replacement, since the disadvantages of supercapacitors mentioned therein, such as high self-discharge and low internal resistance, were not disadvantages in the context of aerosol-generating devices (grounds of appeal, pages 8 and 9).

13. The Board, however, concurs with the opposition division and the opponent that replacing the capacitor in D10 with a rechargeable battery is obvious in light of D19. D19 lists advantages and disadvantages of supercapacitors and rechargeable batteries. Even if some of the mentioned disadvantages are not decisive in the present context, the choice between a capacitor and a battery remains an obvious trade-off: capacitors typically provide high-power bursts but limited energy storage, whereas batteries generally offer greater storage capacity at the expense of slower response. Selecting one or the other in accordance with the device's power requirements and usage pattern is a matter of routine engineering, not inventive activity.

14. Finally, the patent proprietor argued that using a capacitor to power the heater, as in the prior art, caused fluctuations in the output voltage level of the battery, creating electronic noise that complicated the regulation of the controller circuit. In its view, the claimed use of two batteries improved the separation between the heater and controller circuits, since depletion of the heater's power supply would not affect device control (grounds of appeal, page 10).

The Board does not find this argument convincing either. Replacing the capacitor with a battery does not inherently eliminate voltage fluctuations or noise, because claim 1 still permits the second battery (which powers the controller) to recharge the first battery. Such recharging can likewise involve high currents that can disturb the controller's supply. Accordingly, the use of two batteries does not credibly achieve this technical effect over the whole scope of the claim.

15. Accordingly, claim 1 of auxiliary request 1 does not involve an inventive step (Article 56 EPC).

Auxiliary request 2 - inventive step

16. Claim 1 of auxiliary request 2 comprises features F1 to F5.1, F7, and F7.1 of the main request. Feature F7.1 further specifies that the additional power supply "*comprises a third power supply*". Thus, claim 1 is confined to the second alternative of claim 1 of the main request and narrows it further.

17. The opposition division held (decision, point 5.2.2) that the inductive power source in [0032] of D10 implied the presence of some induction means in the aerosol-generating device for converting a varying

magnetic field into electrical current. In the division's view, these means constituted an additional power supply as required by feature F7.

On that basis, the division considered the distinguishing feature to be that the additional power supply recharged the first power supply, whereas in D10 the induction means charged the battery, i.e. the second power supply. Since this difference did not "consistently" achieve a technical effect, the division concluded that claim 1 lacked an inventive step.

18. The Board, however, notes that claim 1 defines the additional power supply only by (1) its function of recharging the first power supply and (2) the requirement that it comprises a third power supply. Claim 1 does not require the third power supply itself to perform the recharging. As indicated in the patent as granted (paragraph [0009] and claim 7), the additional power supply may also comprise the second power supply. Thus, as also pointed out by the opponent (reply, page 5), claim 1 also covers the arrangement disclosed in D10 in which the first power supply is recharged via the second one.

Based on this interpretation, the difference over D10 is not that the additional power supply recharges the first one (as established by the opposition division), but merely that the additional power supply comprises yet another, third power supply.

The decisive question is then whether this third power supply produces a technical effect that can lead to inventive step. The Board considers that it does not, since the third power supply is not used in the claim.

Its mere presence in the device is not sufficient to achieve a technical effect.

19. Accordingly, claim 1 of auxiliary request 2 lacks an inventive step (Article 56 EPC).

Auxiliary request 3 - inventive step

20. Claim 1 of this request adds to claim 1 of auxiliary request 2 the following features:

- the aerosol-generating device comprises a housing defining an internal compartment, and
- the first, second, and third power supplies, the controller, and the electric heater are all located within this compartment.

21. The opposition division considered that D10 did not disclose all components being arranged in a single compartment. In their view, Figure 1 showed a housing with an internal compartment (shell 15) containing the power supplies and the controller, while the heating element was located in a separate cartridge.

The Board is not convinced by this difference. Figure 1 clearly depicts a unitary device with a single shell containing all components, including the heating element 50. This is confirmed by paragraph [0071], which explains that the smoking article in Figure 1 is a single unitary device, with line A indicating only an optional demarcation where two separate components may be joined together.

22. Accordingly, the distinguishing feature over D10 is the same as for claim 1 of auxiliary request 2. Claim 1

consequently lacks an inventive step for the same reasons (Article 56 EPC).

Auxiliary request 4 - admittance

23. Claim 1 of this request adds to claim 1 of auxiliary request 2 the following features from the description:

- a cavity for receiving an aerosol-generating article comprising a solid aerosol-forming substrate, and
- an annular heater configured to surround at least part of the article.

24. The opposition division exercised its discretion not to admit this request, considering it late filed, non-convergent with the higher-ranking requests, *prima facie* not inventive and not a suitable reaction to the course of the proceedings (decision, point 7.2.1).

25. The proprietor requested the Board to admit this request. It argued that it should have already been admitted by the opposition division, as it was filed within the period set under Rule 116 EPC and in response to the change in the division's preliminary opinion on inventive step (grounds of appeal, point 4.3.1). Not admitting the request was a substantial procedural violation, specifically a violation of its right to be heard.

26. Under 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 exercise of discretion or the circumstances of the appeal case justify their admittance.

The Board sees no such error or justification here.

27. The proceedings leading to the filing of auxiliary request 4 can be summarised as follows:

At the oral proceedings on 8 March 2023 (the "first day of oral proceedings"), the opposition division admitted D19 and found that the main request did not comply with Rule 80 EPC. It further concluded that claim 1 of auxiliary requests 1 to 3 lacked an inventive step in view of D10 and D19 (auxiliary requests 2 and 3 having been filed during the oral proceedings). The inventive step assessment deviated from the division's earlier preliminary opinion. As there was not enough time to discuss auxiliary requests 4 to 7, the proceedings were adjourned.

A second summons set 22 December 2023 as the final date for filing written submissions under Rule 116 EPC. In the accompanying annex, the opposition division summarised the conclusions reached on the first day of oral proceedings and gave a negative preliminary opinion on auxiliary requests 4 to 7.

On 21 December 2023, the proprietor filed new auxiliary requests 4 to 6 and renumbered the previous auxiliary requests 4 to 7 as auxiliary requests 7 to 10.

28. The Board concurs with the opposition division (decision, point 7.2.4) that there is no established principle that submissions filed before the date set under Rule 116 EPC are automatically admissible. Rather, it is established case law that the opposition division has a discretion (not) to admit amendments filed after the period specified in the communication

under Rule 79(1) EPC (see also the Case Law of the Boards of Appeal, 11th edition, IV-C 5.1.4 and 5.1.5).

The division retains discretion even when the amendments are intended to react to objections that depart from a previously notified opinion. The discretion should be exercised depending on whether the amendments are indeed intended to overcome the objections and do so in a manner appropriate and proportionate to the circumstances (e.g. T 1662/21, point 3.2.3).

29. Against this background, the Board is of the opinion that the opposition division had discretion not to admit auxiliary request 4 despite its timely filing under Rule 116 EPC, and the Board considers that this discretion was exercised reasonably.

In particular, the division examined whether the amendments represented a convergent development and a suitable reaction to the course of the proceedings. It found that they did not, as the focus shifted away from the core issue of the power supplies to new subject-matter concerning the heater and aerosol-forming substrate. Moreover, as noted under point 7.2.3 of the decision, the patent proprietor had already been given the opportunity to react to the change of the division's preliminary opinion, and did so by filing auxiliary requests 2 and 3 during the first day of oral proceedings. The subsequent preliminary opinion on the remaining auxiliary requests did not introduce any new issues.

Hence, the Board sees no error in the opposition division's conclusion that auxiliary request 4 was not

an appropriate and proportionate reaction to the course of the proceedings.

30. The Board therefore does not admit auxiliary request 4 into the appeal proceedings (Article 12(6) RPBA).

Conclusion

31. Since the requests ranking higher than auxiliary request 5, on the basis of which the patent was maintained, are either not admissible or not allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairwoman:

T. Buschek A. Wahrenberg

Decision electronically authenticated