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**Datasheet for the decision
of 20 October 2025**

Case Number: T 1318/24 - 3.2.04

Application Number: 18000692.6

Publication Number: 3430921

IPC: A24F40/00, A61M15/06, H05B1/02,
A61M11/04

Language of the proceedings: EN

Title of invention:
VAPORIZATION DEVICE SYSTEMS

Patent Proprietor:
Juul Labs International Inc.

Opponents:
Smokeless.world GmbH
Philip Morris Products S.A.
Nicoventures Trading Limited
STRAWMAN LIMITED (opposition withdrawn)

Headword:

Relevant legal provisions:
EPC Art. 100(c), 76(1)
RPBA 2020 Art. 12(4), 12(6)

Keyword:

Grounds for opposition - subject-matter extends beyond content of earlier application (yes)

Divisional application - subject-matter extends beyond content of earlier application (yes)

Amendment to case - reasons for submitting amendment in appeal proceedings (no)

Late-filed request - should have been submitted in first-instance proceedings (yes)

Decisions cited:

G 0002/10

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 1318/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 20 October 2025

Appellant: Juul Labs International Inc.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 September
2024 revoking European patent No. 3430921
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 patent proprietor appeals the decision of the opposition division to revoke their patent.
- II. The opposition division held inter alia, that claim 1 of the main request (granted claims) extended beyond the content of the parent application as filed. Additionally, each of auxiliary requests 1-111 and 1'-111' contained subject matter that either similarly extended beyond the content of the parent application as filed, broadened the scope of protection conferred by the granted patent, or both.
- III. In preparation for the oral proceedings the Board issued a written communication setting out its preliminary view on the relevant issues.

Oral proceedings in-person before the Board were held on 20 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 4, I to VI, 5 to 111, 1' to 110' and VII to LXXII, filed with the statement of grounds in this order.

The respondents opponents 2 and 3 request that the proprietor's appeal be dismissed.

The opponent 1 has not responded to the proprietor's appeal.

Opponent 4 withdrew their opposition with letter of 24 January 2025.

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

(a) Main request (as granted)

"A device (10) for generating an inhalable aerosol comprising:
a device body (20) comprising a cartridge receptacle (21); and
a cartridge (30, 30a) comprising
 a heater (36, 105, 205, 305) comprising at least one condensation chamber,
 a fluid storage compartment (32), and
 a mouthpiece (31), wherein
the heater is attached to a first end of the fluid storage compartment (32),
the mouthpiece is attached to a second end of the fluid storage compartment (32), and
the device comprises an air inlet passage (51) formed when the cartridge is inserted into the cartridge receptacle (21),
characterised in that either:
 - a channel integral to an exterior surface of the cartridge forms a first side of the air inlet passage and an internal surface of the cartridge receptacle forms a second side of the air inlet passage, or
 - a channel integral to the internal surface of the cartridge receptacle forms the first side of the air inlet passage and the exterior surface of the cartridge forms the second side of the air inlet passage."

(b) Auxiliary request 1 (Amendment A1)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added text):

"...the heater is attached to a first end of the fluid storage compartment (32) and a first end of the cartridge,
the mouthpiece is attached to a second end of the fluid storage compartment (32) and a second end of the cartridge,..."

(c) Auxiliary request 2 (Amendment A2)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added text):

"...the heater is attached to and encloses a first end of the fluid storage compartment (32) and a first end of the cartridge,
the mouthpiece is attached to and encloses a second end of the fluid storage compartment (32) and a second end of the cartridge,..."

(d) Auxiliary request 3 (Amendment A3)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added or deleted text):

"...the heater comprises a heater enclosure fitted on ~~is attached to~~ a first end of the fluid storage compartment (32),...
the mouthpiece is ~~attached to~~ fitted on a second end of the fluid storage container (32),..."

(e) Auxiliary request 4 (Amendment A4)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added text):

"...the heater is attached to a first end of the cartridge and encloses the first end of the cartridge and a first end of the fluid storage compartment (32), the mouthpiece is attached to a second end of the cartridge and encloses the second end of the cartridge and a second end of the fluid storage compartment (32),..."

(f) Auxiliary request 5 (Amendment A5)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added and removed text):

"...characterised in that ~~either~~:

- a channel integral to an exterior surface of the cartridge forms a first side of the air inlet passage and an internal surface of the cartridge receptacle forms a second side of the air inlet passage, wherein the air inlet passage (51) is formed by the channel integral to the exterior surface of the cartridge (30, 30a) and the internal surface of the cartridge receptacle (21) when the cartridge (30, 30a) is inserted into the cartridge receptacle (21) or

~~- a channel integral to the internal surface of the cartridge receptacle forms the first side of the air inlet passage and the exterior surface of the cartridge forms the second side of the air inlet passage.~~"

(g) Auxiliary request 6 (Amendment A6)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added and removed text):

"...characterised in that either:

- a channel integral to an exterior surface of the cartridge forms a first side of the air inlet passage and an internal surface of the cartridge receptacle forms a second side of the air inlet passage, wherein the air inlet passage (51) is formed by the channel integral to the exterior surface of the cartridge (30, 30a) and the internal surface of the cartridge receptacle (21) when the cartridge (30, 30a) is inserted into the cartridge receptacle (21), wherein the channel comprises walls that are recessed into the surface or that protrude from the surface where it is formed or
- ~~- a channel integral to the internal surface of the cartridge receptacle forms the first side of the air inlet passage and the exterior surface of the cartridge forms the second side of the air inlet passage.~~"

(h) Auxiliary request 7 (Amendment A7)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added and removed text):

"...characterised in that either:

- a channel integral to an exterior surface of the cartridge forms a first side of the air inlet passage and an internal surface of the cartridge

receptacle forms a second side of the air inlet passage ~~or~~
~~— a channel integral to the internal surface of the cartridge receptacle forms the first side of the air inlet passage and the exterior surface of the cartridge forms the second side of the air inlet passage.~~"

(i) Auxiliary request 8

Claim 1 as in auxiliary request 6

(j) Auxiliary requests 9-24

Auxiliary requests 9 to 12 are based on combinations of amendment A1 with amendments A5, A6, A7, respectively.

Auxiliary requests 13 to 16 are based on combinations of amendment A2 with amendments A5, A6, A7, respectively.

Auxiliary requests 17 to 20 are based on combinations of amendment A3 with amendments A5, A6, A7, respectively.

Auxiliary requests 21 to 24 are based on combinations of amendment A4 with amendments A5, A6, A7, respectively.

(k) Auxiliary requests 25 to 49 (Amendment A8)

Claim 1 of these requests is as in the main request and in auxiliary requests 1 to 24, respectively.

Amendment A8 consists in the deletion of claims 11 to 14.

(l) Auxiliary requests 50-74 (Amendment A9)

Claim 1 of these requests is as in the main request and in auxiliary requests 1 to 24, respectively.

Amendment A9 consists in the deletion of claims 8, 9 and 14.

(m) Auxiliary requests 75-98

Claim 1 of these requests is as in auxiliary requests 1 to 24, respectively.

These requests include amendments A8 and A9, which consist in the deletion of claims 8, 9 and 11-14.

(n) Auxiliary request 99 (Amendment A10)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added text):

"...and
the device comprises an air inlet passage (51) formed when the cartridge is inserted into the cartridge receptacle (21), wherein the cartridge (30, 30a) is detachable, wherein the cartridge receptacle (21) and the detachable cartridge form a separable coupling, and wherein the separable coupling comprises a friction assembly, a snap-fit assembly or a magnetic assembly, characterised in that either:..."

(o) Auxiliary request 100

Claim 1 is based on the combinations of amendments A6 and A10.

(p) Auxiliary requests 101 to 104

Auxiliary requests 101 to 104 are based on combinations of amendments in auxiliary request 100 (A6 plus A10) with amendments A1, A2, A3 and A4, respectively.

(q) Auxiliary request 105 (amendment A11)

Claim 1 as in the main request with the following amendment (emphasis by the Board to indicate added text)

"...a fluid storage compartment (32), wherein the heater is in fluid communication with the fluid storage compartment, wherein the fluid storage compartment is capable of retaining condensed aerosol fluid, and a mouthpiece (31), wherein..."

(r) Auxiliary requests 106-110

Auxiliary request 106 is based on the combinations of amendments A6, A10 and A11.

Auxiliary Requests 107 to 110 are based on a combination of auxiliary Requests 1 to 4, respectively, with auxiliary Request 106.

(s) Auxiliary request 111 and 1' to 110' (Amendment A12)

The appellant proprietor has not formally filed these auxiliary requests.

They only indicated in their grounds of appeal that these auxiliary requests correspond to the main request and auxiliary requests 1 to 110, respectively, with amendment A12, which consist in the deletion of

unspecified dependent claims, claim 1 remaining thus unaltered.

(t) Auxiliary requests I to LXXII (Amendments A13, A14, A15, and A16)

These requests are based on combinations of amendments A1-A12 together with additional amendments A13-A16 as follows:

Amendment A13:

Requiring amendment A1 or A2 or A4, and specifying the following in the independent claims:

"...wherein the first end of the fluid storage compartment (32) corresponds to the first end of the cartridge,...

...wherein the second end of the fluid storage compartment (32) corresponds to the second end of the cartridge,..."

All dependent claims are deleted.

Amendment A14:

Further specifying in the independent claims:

"...the heater is attached to a first end of the fluid storage compartment (32) such that the heater is located at a first end of the cartridge,..."

...the mouthpiece is attached to a second end of the fluid storage compartment (32) such that the mouthpiece is located at a second end of the cartridge,..."

All dependent claims are deleted.

Amendment A15:

Further specifying in the independent claims:

"...the heater is attached to a first end of the fluid storage compartment (32) with a snap-fit coupling...

...the mouthpiece is attached to a second end of the fluid storage compartment (32) with a snap-fit coupling..."

All dependent claims are deleted.

Amendment A16:

Further specifying in the independent claims:

"...the heater is attached to a first end of the fluid storage compartment (32) with a snap-fit coupling such that the heater is located at a first end of the cartridge...

...the mouthpiece is attached to a second end of the fluid storage compartment (32) with a snap-fit coupling such that the mouthpiece is located at a second end of the cartridge..."

All dependent claims are deleted.

Auxiliary requests I to III are based on combinations of amendment A13 with one of amendments A1, A2 and A4, respectively.

Auxiliary requests IV to VI are based on amendments A14 to A16, respectively.

Auxiliary requests VII to XVII are based on combinations of amendments A1 and A13 with amendments A5, A6, A7, A8, A10 and A11, respectively.

Auxiliary requests XVIII to XXVIII are based on combinations of amendments A2 and A13 with amendments A5, A6, A7, A8, A10 and A11, respectively.

Auxiliary requests XXIX to XXXIX are based on combinations of amendments A2 and A13 with amendments A5, A6, A7, A8, A10 and A11, respectively.

Auxiliary requests XL to L are based on combinations of amendment A14 with amendments A5, A6, A7, A8, A10 and A11, respectively.

Auxiliary requests LI to LXI are based on combinations of amendment A15 with amendments A5, A6, A7, A8, A10 and A11, respectively.

Auxiliary requests LXII to LXXII are based on combinations of amendment A16 with amendments A5, A6, A7, A8, A10 and A11, respectively.

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

WO 2015/100361 A1 parent 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

2.1 The appellant proprietor contests the opposition division's finding that features:

- the heater is attached to a first end of the fluid storage compartment; and
- the mouthpiece is attached to a second end of the fluid storage compartment

in claim 1 add subject-matter over the disclosure of the parent application (published as WO 2015/100361, and also referred to as D3, PCT or original disclosure in the decision under appeal and in this decision).

Having considered the parties' arguments and submissions, the Board shares the opposition division's conclusions.

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)

In this respect the Board first notes that the proprietor's reliance on the "novelty test" (litmus test) and the "two-layer test" (see grounds of appeal page 13, first and second paragraphs) cannot replace this standard, see CLB II.E.1.3.7.

- 2.3 For the first alternative of granted claim 1, the proprietor cites the combination of original claims 82, 88, 89, 96, 97, 99 and 100; for the second, claims 83, 88, 89, 96, 97, 99 and 100 (grounds, section F.II.2, pages 14 and 15) as starting point for the question of basis of the granted claim in the original PCT application. Alternatively, the appellant argued during the oral proceedings that original claim 89 ("...wherein the heater is attached to a first end of the cartridge") and claim 100 ("...wherein the mouthpiece is attached to a second end of the cartridge") were not part of that basis or starting point.

This difference is however not relevant. Whichever alternative is taken, the features of granted claim 1 that

- the heater is attached to a first end of the fluid storage compartment ("FSC") and

- the mouthpiece is attached to a second end of the fluid storage compartment ("FSC")
are not present in any of them.

They are therefore amendments to the combination of original claims, either by addition of the features or by replacement of the features that the attachments are to the ends of the cartridge in original claims 89 and 100.

- 2.4 For the alternative using original claims 89 and 100 as included in the original starting point combination of claims, the application consistently presents the FSC as a subordinate component of the cartridge. Re-labelling the attachment points from the cartridge ends to the FSC ends thus replaces one technical feature with another and therefore constitutes an amendment, contrary to one of the appellant's arguments.
- 2.5 In any case, for both alternatives, the Board concurs with the opposition division's conclusion in section 4.11 of the appealed decision that the contested features are not directly and unambiguously derivable from the original parent application and represent therefore added subject-matter.
- 2.6 The proprietor submits that the original disclosure contains a general teaching for the disputed features, in particular for the feature, analysed below, that the heater is attached to a first end of the FSC, citing several passages of the description and the figures, in particular Figures 7B and 9, as well as the method of fabrication set out in the description and in original claim 158.

The appellant also argues that there is an ambiguity in original claims 149 and 160 since it is not spelt out to which element the "first end" and the "second end" refer and that this ambiguity is solved by the person skilled in the art understanding that the first and second end are those of the fluid storage compartment.

2.7 These arguments are not convincing. Firstly, the appellant has not identified any passage in the original disclosure in which the contested feature is literally disclosed.

As regards the passages of the description cited by the proprietor, including those relating to the method of fabrication (see point F.II.4 of the statement of grounds), the Board considers that these do not directly and unambiguously disclose an attachment to the fluid storage compartment (FSC). The appellant refers, for example, to original paragraph [0025], which states:

"...The cartridge may comprise a fluid storage compartment, a heater affixed to a first end..., and a mouthpiece affixed to a second end...",
as well as to original paragraphs [0032], [0035], [0048], and to claims 149 and 160 containing similar wording, and to original method claim 158, which reads:
"158. A method of fabricating a cartridge for a device for generating an inhalable aerosol comprising:
providing a fluid storage compartment; affixing a heater to a first end...; and affixing a mouthpiece to a second end...",
together with paragraph [0046] containing a similar disclosure.

The appellant points out that all these passages, including those describing the fabrication methods, are

ambiguous in relation to the contested features. From this, the appellant concludes that the ambiguity is solved by the "first end" and "second end" being understood as those of the fluid storage compartment. While the Board concurs that there is an ambiguity, the Board does not agree with the appellant's conclusions: The expressions "first end" and "second end" are undefined and could just as plausibly refer to the ends of the cartridge. Nothing in these passages excludes that interpretation.

Other passages of the description and claims, by contrast, explicitly disclose only the alternative configuration, namely that the heater is attached to a first end of the cartridge (see, for example, original claim 89).

- 2.8 Regarding Figures 7B and 9 (and associated description in paras 00172 - 00179), these describe a specific embodiment where an attachment to an end of the FSC is not unambiguously derivable.
- 2.9 As explained in detail by the appellant during the oral proceedings, the appellant proprietor also relied on an alternative interpretation of the expression "attached to" in granted claim 1 and in the original disclosure. According to the appellant, the cited original embodiment of the original description (Figures 7B and 9 and associated description) would directly and unambiguously disclose the disputed feature of granted claim 1 when the term "attached to" is construed correctly.

According to the appellant, it is not decisive whether a direct attachment of the heater to the first end of the FSC can be derived from the drawings or the

description in the ordinary sense of that expression. Rather, they submit that the cited passages and drawings convey a general teaching that the heater and mouthpiece are positioned at respective ends of the FSC, irrespective of the specific structural means of affixation. On this basis, the appellant argues that "attached to" in the wording of a claim (e.g. as in original claim 89 "attached to a first end of the cartridge") - read in the context provided by the whole description and drawings relating to Figures 7B and 9 - should be understood as an indication of location, not of physical attachment. This interpretation would be consistent with the findings of the UPC Court in the parallel case concerning the same patent (UPC decision CFI 316/2023, section 8.23). Accordingly, the appellant proprietor maintains that, on this reading, the feature is directly and unambiguously derivable from the embodiment of Figures 7B and 9.

The Board cannot accept this argument. It agrees that claims and patent documents must be interpreted with a mind willing to understand and in their context. However, the claims define the matter for which protection is sought (Article 84 EPC) and are to be read in their broadest technically sensible meaning, without restricting its scope by reading into it features appearing only in the description (see Case Law of the Boards of Appeal, 11th edition 2025, II.A. 6.3.1 and 6.3.4).

In its ordinary meaning, the expression "attached to" encompasses a configuration in which the heater is directly affixed to the relevant object (the first end of the cartridge or of the FSC). While the embodiment of the description relied upon by the appellant may illustrate a variant in which the heater is merely

located at that position but affixed elsewhere, such an embodiment does not restrict the ordinary reading of the claim wording - i.e. directly affixed to the end of the object. Such embodiments are technically sensible and consistent with the overall teaching that the heater is positioned at that end. When interpreted consulting the description, the claim thus covers both possibilities.

The original application discloses support only for (i) a heater located at the first end of the FSC and cartridge but affixed elsewhere (from the cited embodiment and figures), and (ii) a heater located at and directly affixed to the first end of the cartridge (e.g. original claim 89 read in its broad sense). It however does not disclose a configuration in which the heater is both located at and affixed to a first end of the FSC. The latter embodiment is introduced only by the wording of granted claim 1 and is not directly and unambiguously derivable from the original disclosure.

2.10 In conclusion, the appellant proprietor has not convinced the Board that the opposition division erred in finding that the feature of claim 1 of the main request requiring that the heater is attached to a first end of the fluid storage compartment adds subject-matter. The Board thus upholds the decision of the opposition division in this respect.

3. Auxiliary request 1

3.1 The same conclusion applies to claim 1 of auxiliary request 1, which maintains the feature that the heater is attached to a first end of the fluid storage compartment.

3.2 The addition to granted claim 1 of the further feature that the heater is also attached to a first end of the cartridge does not alter the above conclusion for the main request. As previously found, the expressions "attached to a first end" of the FSC or of the cartridge in the claims encompass embodiments in which the heater is not only located at the first end of the FSC or the cartridge but also affixed to it. Accordingly, the Board remains unconvinced that the requirement that the heater is attached to a first end of the fluid storage compartment is directly and unambiguously derivable from the original parent application.

3.3 The Board therefore concludes that claim 1 of this request contains added subject-matter, contrary to Article 76(1) EPC.

4. Auxiliary requests 2-111, 1'-110'

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

"7. Auxiliary requests 1-111, 1'-110' - Added subject-matter

7.1 These requests are based on combinations of amendments A1-A12, analysed below. Without prejudice to the question of admissibility - which may be discussed if necessary - none of the amendments appear to overcome the added subject-matter objections against the main request or they appear to extend the protection conferred by the granted patent, as concluded by the opposition division (see sections 6-13, 30, 55, 104, 110, and 116 of the decision under appeal). ...

7.2 Amendment A1 adds that "...the heater is attached to a first end of the fluid storage compartment (32) and a first end of the cartridge,..." with similar addition for the mouthpiece attachment. Rather than an amendment by replacing the original "attachment to the cartridge" formulation to the original starting point combination of claims, the amendment A1 represents an amendment by addition of the feature that the heater and the mouthpiece are attached to the FSC to that starting point combination of claims. The arguments for lack of original support for lack of direct and unambiguous basis for this feature remains applicable. ...

7.3 Amendment A2 adds that the heater (and the mouthpiece) is attached to and encloses a first end (or a second end) of both the fluid storage compartment and the cartridge. The feature of attachments to the FSC remains; thus the same objections as for A1 apply.

7.4 Amendment A3 specifies that "...the heater comprises a heater enclosure fitted on is attached to a first end of the fluid storage compartment (32)...", with a similar amendment for the mouthpiece attachment. The amendment to the identified starting point combination of original claims also appears to lack direct and unambiguous disclosure in the parent application or to represent an unallowable intermediate generalisation of features taken from the specific embodiment of original para 00179 (Figs. 7B, 9), similar to the main request. It also appears to extend the scope of protection, since fitting-on is a geometrical requirement that does not necessarily imply attachment as required by the granted claims. The term "attachment" implies a connection or fastening, whereas

"fitting-on" suggests a mere placement or shape adaptation.

7.5 *Amendment A4 states that the heater is attached to and encloses a first end of the cartridge and a first end of the FSC, with a similar formulation for the mouthpiece. This appears to broaden protection compared to the granted claims, where attachment to the FSC was expressly required - now potentially removed. As with the main request, the amendment also lacks direct and unambiguous support in the original disclosure. ...*

7.6 *Amendment A5 splits claim 1 into two claims corresponding to the alternatives 1 and 2 in granted claim 1, and adds features relating to the formation of the air inlet passage. They maintain the feature of the attachment of the heater and mouthpiece to ends of the FSC, without resolving the added subject-matter issues of the main request, as concluded by the opposition division.*

7.7 *Amendment A6, is based on A5 with further detail on the air inlet passage, also without addressing the added subject-matter issues of the main request.*

7.8 *Amendment A7 deletes alternative 2 from claim 1. The objections for alternative 1 remain applicable.*

7.9 *Amendment A8 and A9 delete certain dependent claims (8, 9, 11, 12, 13, 14) but leave claim 1 (or independent claims 1 and 2) unchanged. Thus, the observations above regarding the independent claims remain valid.*

7.10 Amendment A10 adds features concerning the detachable cartridge and the type of separable coupling. They maintain the feature of the attachment of the heater and mouthpiece to the ends of the FSC, without resolving the added subject-matter issues of the main request, as concluded by the opposition division.

7.11 Amendment A11 introduces limitations on fluid communication and aerosol retention capability. These do not resolve the added-matter objections arising from the heater and mouthpiece attachments to the FSC, either.

7.12 Amendment A12 corresponds to auxiliary requests 111 and 1'-110' and only involves the deletion of dependent claims from higher ranked requests based on A1-A11. The above observations remain applicable.

...

8. Auxiliary requests I-XLVII

8.1 These auxiliary requests do not appear admissible under Art 12(4) RPBA and 12(6) RPBA (see opponent 2's reply section 4.1.3 and opponent 3's reply section C.2.3)

8.2 The requests were newly filed in appeal, without adequate justification for not submitting them during the first-instance proceedings. They address added-matter objections that formed the basis of the decision under appeal - specifically, the objections discussed above in relation to the main request - which have been on the table since all four notices of opposition and repeated in the opposition division's preliminary

opinion of 30 January 2024. They should therefore have been filed during first instance proceedings, Art 12(6) RPBA. There is nothing in the written decision that could be regarded as new or unexpected so as to justify these late filings.

8.3 The proprietor already responded to the preliminary opinion of the opposition division with 221 auxiliary requests in first instance. The addition of 47 further requests on appeal burdens procedural economy and does not appear admissible under Article 12(4) RPBA. ..."

All parties refrained from comment after issuance of the communication. Absent any further submissions and after reviewing its preliminary opinion, the Board sees no reason to change its point of view.

The Board thus confirms the decision of the opposition division that auxiliary requests 2-110 contain added subject-matter, Art 76(1) EPC, and decides not to admit new auxiliary requests I-LXXII into the proceedings, Art 12(4) and 12(6) RPBA.

Regarding auxiliary Requests 111 and 1' - 110', the appellant proprietor has not formally filed these auxiliary requests. They only indicated in their grounds of appeal that these auxiliary requests correspond to the main request and auxiliary requests 1 to 110, respectively, with amendment A12, which consist in the deletion of dependent claims, claim 1 remaining thus unaltered. Since they have not been filed they can thus not be admitted. Irrespective thereof, they would not overcome the problem of added subject matter (see section 7.12 of the Board's preliminary opinion quoted above).

5. The appellant proprietor has not convinced the Board to depart from the opposition division's decision, and the new requests were not admitted. The appealed decision is therefore confirmed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated