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**Datasheet for the decision  
of 11 November 2025**

**Case Number:** T 1319/24 - 3.2.02

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**Language of the proceedings:** EN

**Title of invention:**  
VAPORIZER

**Patent Proprietor:**  
VMR Products, LLC

**Opponents:**  
Nicoventures Trading Limited  
Philip Morris Products S.A.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56  
RPBA 2020 Art. 11, 13(2)

**Keyword:**

Novelty - main request (no)

Inventive step - auxiliary requests (no)

Remittal - (no)

Amendment after summons - exceptional circumstances (no)

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T 1628/21

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1319/24 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 11 November 2025**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
24 September 2024 concerning the maintenance of  
European Patent No. 3613453 in amended form**

**Composition of the Board:**

<b>Chairman</b>	M. Alvazzi Delfrate
<b>Members:</b>	D. Ceccarelli
	N. Obrovski

## **Summary of Facts and Submissions**

I. The patent proprietor and opponents 1 and 2 appealed against the opposition division's decision that, account being taken of the amendments made by the patent proprietor during the opposition proceedings according to auxiliary request 30b, European patent No. 3 613 453 and the invention to which it relates met the requirements of the EPC.

II. The board summoned the parties to oral proceedings and sent its preliminary opinion in a communication pursuant to Article 15(1) RPBA dated 8 September 2025. The board explained why it considered that none of the proprietor's requests were allowable in view of:

D3: YouTube video of 28 June 2012 providing an overview of the INNOKIN iTaste VV device

III. Oral proceedings took place on 11 November 2025.

The patent proprietor requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or on the basis of one of auxiliary requests 1 to 5, 6a, 6 to 17, 18a, 18 to 29, 30a, 30b, 30, 30c, 30d, 31 to 33, 34a, 34 to 46, 47a, 47, 48a, 48, 49a, 49, 50a, 50b, 50, 50c, 51a, 51, 52a, 52, 53a, 53, 54a, 54, 55a, 55b, 55, 55c, 56a, 56, 57a, 57, 58a, 58, 59a, 59, 60a, 60b, 60, 60c, 61a, 61, 62a, 62, 63a, 63, 64a, 64, 65a, 65b, 65, 65c, 66a, 66, 67a, 67, 68a, 68, 69a, 69, 70a, 70b, 70, 70c, 71a and 71.

Auxiliary requests 1 to 29, 30a, 30b, 30, 30c, 31 to 49, 50a, 50b, 50, 50c, 51 to 54, 55a, 55b, 55, 55c, 56 to 59, 60a, 60b, 60, 60c, 61 to 64, 65a, 65b, 65, 65c,

66 to 69, 70a, 70b, 70, 70c and 71 were filed with the reply to the opponents' statements of grounds of appeal on 30 May 2025. Auxiliary requests 6a, 18a, 34a, 47a to 49a, 51a to 54a, 56a to 59a, 61a to 64a, 66a to 69a and 71a were filed with the letter dated 23 October 2025. Auxiliary request 30d was filed during the oral proceedings on 11 November 2025.

The opponents requested that the decision under appeal be set aside and that the patent be revoked.

IV. The following documents are also mentioned in this decision:

D3a: Transcript and English translation of video D3 filed by opponent 1 on 12 January 2024

D5: WO 2013/093695 A1

D16: WO 2013/025921 A1

D21: Wikipedia, Pogo pin, 16 March 2013

D32: Transcript and English translation of video D3 filed by the proprietor on 7 November 2025

V. **Claim 1 of the main request** reads as follows:

"A vaporizer comprising:

a battery portion (100) comprising:

a battery housing segment (102) proximate a first end (102A) of the battery portion, the battery housing segment housing a battery (110), and  
a cartomizer receiving segment (104) proximate a second end (104A) of the battery portion, a chamber (108) provided within at least a portion of the cartomizer

receiving segment, wherein the chamber has an insertion end distal from the battery housing segment and a base end proximate to the battery housing segment;  
battery electrical contacts provided at the base end of the chamber;  
an outer shell (106) commonly shared by the battery housing segment (102) and the cartomizer receiving segment (104); and

a cartomizer (200) configured for insertion into the distal insertion end of the chamber of the cartomizer receiving segment of the battery portion, the cartomizer comprising:

a cartomizer body (208) configured to hold a vaporizable substance;  
a heating element (214) within the cartomizer body configured to heat the vaporizable substance;  
cartomizer electrical contacts on an exterior of the cartomizer,  
cartomizer electrical circuitry configured to direct an electrical current between the cartomizer electrical contacts and the heating element, and  
a mouthpiece in fluid communication with the cartomizer body,

wherein the mouthpiece extends from the insertion end of the chamber when the cartomizer body is inserted in the chamber,

wherein the battery electrical contacts are configured to contact the cartomizer electrical contacts when the cartomizer is

inserted in the chamber,  
wherein the heating element is configured  
to be activated by the electrical current  
and to heat the vaporizable substance,  
wherein the vaporizer further comprises  
charging contacts (160) at or proximate to  
the first end (102A)."

**Claim 1 of auxiliary request 1** reads as claim 1 of the  
main request except that it comprises the following  
additional wording after the third occurrence of the  
word "chamber":

" , wherein the battery electrical contacts are  
provided between the base end of the chamber and  
the battery housing segment (102) "

**Claim 1 of auxiliary request 2** reads as claim 1 of the  
main request except that it comprises the following  
additional wording at the end of the claim:

" , wherein the vaporizer further comprises battery  
electrical circuitry housed within the battery  
housing segment (102) and operable to direct an  
electrical current between the battery (110), the  
battery electrical contacts, the cartomizer  
electrical contacts, the heating element (214), and  
the inserted cartomizer (200) "

**Claim 1 of auxiliary request 3** reads as claim 1 of the  
main request except that it comprises the following  
additional wording after the fifth occurrence of the  
word "configured":

"and positioned"

**Claim 1 of auxiliary request 4** reads as claim 1 of the main request except that it comprises the following additional wording after the second occurrence of the word "configured":

"and dimensioned"

**Claim 1 of auxiliary request 5** reads as claim 1 of the main request except that it comprises the following additional wording at the end of the claim:

", wherein the battery electrical contacts are spring-loaded pins extending into a portion of the chamber (108) and retractable when pressed by the cartomizer (200) when inserted into the chamber (108)"

**Claim 1 of auxiliary request 6** reads as claim 1 of the main request except that it comprises the following additional wording at the end of the claim:

", wherein the vaporizer further comprises magnets (124, 202) to retain the cartomizer (200) within the chamber (108)"

**Claim 1 of auxiliary request 6a** reads as claim 1 of auxiliary request 6.

**Claim 1 of auxiliary request 7** reads as claim 1 of the main request except that it comprises the following additional wording at the end of the claim:

", wherein a wicking element (216) is provided within the cartomizer body (208)"

**Claim 1 of auxiliary request 8** reads as claim 1 of the main request except that the word "and" before the expression "a mouthpiece in fluid communication with the cartomizer body," has been deleted and the following additional wording has been inserted after the same expression:

"and an inhalation tube (222) in fluid communication with the heating element (214) and a wicking element (216), wherein the inhalation tube (222) extends from the heating element (214) and the wicking element (216) to the mouthpiece (220),"

**Claim 1 of auxiliary request 9** reads as claim 1 of the main request except that it comprises the following additional wording at the end of the claim:

",wherein the vaporizer further comprises a magnet (162) proximate to the charging contacts (160)"

**Claims 1 of auxiliary requests 10, 11, 12 and 13** read as claim 1 of the main request.

**Claims 1 of auxiliary requests 14 to 21** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in the claims 1 of auxiliary requests 2 to 9 respectively.

**Claim 1 of auxiliary request 18a** reads as claim 1 of auxiliary request 18.

**Claims 1 of auxiliary requests 22, 23, 24, 25 and 26** read as claim 1 of auxiliary request 1.

**Claims 1 of auxiliary requests 27, 28, 29, 30a, 30 and 31** read as claim 1 of auxiliary request 17.

**Claim 1 of auxiliary request 30b** reads as claim 1 of auxiliary request 1 except that it comprises the following additional wording at the end of the claim:

" , wherein each of the battery electrical contacts is a spring-loaded pin extending into a portion of the chamber (108) and retractable when pressed by the cartomizer (200) when inserted into the chamber (108) "

**Claim 1 of auxiliary request 30c** reads as claim 1 of auxiliary request 30b.

**Claim 1 of auxiliary request 30d** reads as claim 1 of auxiliary request 30b except that it comprises the following additional wording after the second occurrence of the expression "first end (102A)":

" , wherein the vaporizable substance is a fluid, the heating element includes a wicking element for absorbing the fluid, and at least a portion of the cartomizer body is composed of a translucent material"

**Claim 1 of auxiliary request 32** reads as claim 1 of auxiliary request 1 except that it additionally comprises the amendments carried out in each of the claims 1 of auxiliary requests 2, 3 and 4.

**Claims 1 of auxiliary requests 33 to 37** read as claim 1 of auxiliary request 32 except that they additionally comprise the amendments carried out in the claims 1 of auxiliary requests 5 to 9 respectively.

**Claim 1 of auxiliary request 34a** reads as claim 1 of

auxiliary request 34.

**The claims 1 of auxiliary requests 38 to 41** read as claim 1 of auxiliary request 32.

**The claims 1 of auxiliary requests 42 to 46** read as claim 1 of auxiliary request 33.

**Claims 1 of auxiliary requests 47 to 51** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in each of the claims 1 of auxiliary requests 2, 3, 4, 5 and 6.

**Claim 1 of auxiliary request 47a** reads as claim 1 of auxiliary request 47.

**Claim 1 of auxiliary request 48a** reads as claim 1 of auxiliary request 48.

**Claim 1 of auxiliary request 49a** reads as claim 1 of auxiliary request 49.

**Claim 1 of auxiliary request 50a** reads as claim 1 of auxiliary request 1 except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 5 and 6.

**Claim 1 of auxiliary request 50b** reads as claim 1 of auxiliary request 30b except that it additionally comprises the amendments carried out in claim 1 of auxiliary request 6.

**Claim 1 of auxiliary request 50c** reads as claim 1 of auxiliary request 50b.

**Claim 1 of auxiliary request 51a** reads as claim 1 of

auxiliary request 51.

**Claims 1 of auxiliary requests 52 to 56** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in each of the claims 1 of auxiliary requests 2, 3, 4, 5, 6 and 7.

**Claim 1 of auxiliary request 52a** reads as claim 1 of auxiliary request 52.

**Claim 1 of auxiliary request 53a** reads as claim 1 of auxiliary request 53.

**Claim 1 of auxiliary request 54a** reads as claim 1 of auxiliary request 54.

**Claim 1 of auxiliary request 55a** reads as claim 1 of auxiliary request 1 except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 5, 6 and 7.

**Claim 1 of auxiliary request 55b** reads as claim 1 of auxiliary request 30b except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 6 and 7.

**Claim 1 of auxiliary request 55c** reads as claim 1 of auxiliary request 55b.

**Claims 1 of auxiliary requests 57 to 61** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in each of the claims 1 of auxiliary requests 2, 3, 4, 5, 6 and 8.

**Claim 1 of auxiliary request 56a** reads as claim 1 of auxiliary request 56.

**Claim 1 of auxiliary request 57a** reads as claim 1 of auxiliary request 57.

**Claim 1 of auxiliary request 58a** reads as claim 1 of auxiliary request 58.

**Claim 1 of auxiliary request 59a** reads as claim 1 of auxiliary request 59.

**Claim 1 of auxiliary request 60a** reads as claim 1 of auxiliary request 1 except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 5, 6 and 8.

**Claim 1 of auxiliary request 60b** reads as claim 1 of auxiliary request 30b except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 6 and 8.

**Claim 1 of auxiliary request 60c** reads as claim 1 of auxiliary request 60b.

**Claim 1 of auxiliary request 61a** reads as claim 1 of auxiliary request 61.

**Claims 1 of auxiliary requests 62 to 66** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in each of the claims 1 of auxiliary requests 2, 3, 4, 5, 6, 7 and 9.

**Claim 1 of auxiliary request 62a** reads as claim 1 of auxiliary request 62.

**Claim 1 of auxiliary request 63a** reads as claim 1 of auxiliary request 63.

**Claim 1 of auxiliary request 64a** reads as claim 1 of auxiliary request 64.

**Claim 1 of auxiliary request 65a** reads as claim 1 of auxiliary request 1 except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 5, 6, 7 and 9.

**Claim 1 of auxiliary request 65b** reads as claim 1 of auxiliary request 30b except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 6, 7 and 9.

**Claim 1 of auxiliary request 65c** reads as claim 1 of auxiliary request 65b.

**Claim 1 of auxiliary request 66a** reads as claim 1 of auxiliary request 66.

**Claims 1 of auxiliary requests 67 to 71** read as claim 1 of auxiliary request 1 except that they additionally comprise the amendments carried out in each of the claims 1 of auxiliary requests 2, 3, 4, 5, 6, 8 and 9.

**Claim 1 of auxiliary request 67a** reads as claim 1 of auxiliary request 67.

**Claim 1 of auxiliary request 68a** reads as claim 1 of auxiliary request 68.

**Claim 1 of auxiliary request 69a** reads as claim 1 of auxiliary request 69.

**Claim 1 of auxiliary request 70a** reads as claim 1 of auxiliary request 1 except that it additionally

comprises the amendments carried out in claims 1 of auxiliary requests 5, 6, 8 and 9.

**Claim 1 of auxiliary request 70b** reads as claim 1 of auxiliary request 30b except that it additionally comprises the amendments carried out in claims 1 of auxiliary requests 6, 8 and 9.

**Claim 1 of auxiliary request 70c** reads as claim 1 of auxiliary request 70b.

**Claim 1 of auxiliary request 71a** reads as claim 1 of auxiliary request 71.

VI. The patent proprietor's arguments, where relevant to this decision, can be summarised as follows.

*Main request - novelty over D3*

Video D3 was not available via the internet link indicated by opponent 1. It could not be assessed if and when the video had been made available to the public. No public prior use of the INNOKIN iTaste VV device described in the video had been proven either.

In view of the claim features identified by the board in the INNOKIN iTaste VV device described in D3 in its preliminary opinion, which differed from the interpretation of the opposition division in the impugned decision, D3 still did not disclose:

- battery electrical contacts provided at the base end of the chamber of the battery portion of the claimed vaporiser;
- an outer shell commonly shared by the battery housing segment and the cartomizer receiving segment of the

- battery portion;
- a heating element within the cartomizer configured to heat a vaporizable substance;
- cartomizer electrical contacts on an exterior of the cartomizer;
- a mouthpiece in fluid communication with the cartomizer body and extending from the insertion end of the chamber when the cartomizer body is inserted in the chamber
- battery electrical contacts configured to contact the cartomizer electrical contacts when the cartomizer is inserted in the chamber

For the assessment of novelty, it had to be established whether a piece of prior art disclosed the features of the claim in a direct and unambiguous way. The video of D3 merely reflected the subjective impression of a test user, rather than an objective evaluation of the described device under test.

There was no direct and unambiguous disclosure in D3 that the central object and the continuous external metal wall of the chamber of the battery portion formed battery electrical contacts. Even if this were the case, there would be no disclosure that the contact with the metal wall was provided at the base end of the chamber. D3 instead suggested that the flange at the insertion end of the chamber provided an electrical contact because this flange was where the cartomizer of D3 abutted with the chamber of the battery portion in its inserted state. In their written submissions, the opponents had not argued that the external metal wall formed an electrical contact. The differing interpretations of D3 by the opponents and the board with respect to where the battery electrical contacts were disclosed confirmed that D3 did not provide direct

and unambiguous disclosure of the claim feature.

It was visible in D3 that the parts of the battery portion which housed the battery housing segment and the cartomizer receiving segment were made of different materials. The battery housing segment had a white shell whereas the cartomizer receiving segment had a metal housing. Hence, the vaporizer described in D3 did not comprise an outer shell commonly shared by both the battery housing segment and the cartomizer receiving segment as claimed.

D3 did not disclose a heating element as claimed. The discussion of the electric resistance of the cartomizer in D3 made the presence of a heating element likely but not certain as other means beside heating were known to create an aerosolised form of a liquid. Moreover, there was no disclosure that a heating element was disposed in the cartomizer body, which was the place in the cartomizer where a vaporisable substance was held.

There was no disclosure of cartomizer electrical contacts on the exterior of the cartomizer. The central pin in the chamber of the battery portion could be received within the circular hole at the lower end of the cartomizer identified in D3. In such a scenario, a resulting electrical contact would be located inside the cartomizer.

The mouthpiece of the INNOKIN iTaste VV device shown in D3 was the part that stuck out of the cartomizer and did not extend from the insertion end of the chamber of the battery portion when the cartomizer was inserted in the chamber. In fact, it did not extend from the battery portion at all. It was the cartomizer which extended out of the metal housing of the battery

portion. Moreover, no part of the plastic body comprising the mouthpiece of the INNOKIN iTaste VV device would be located inside the battery portion in the inserted state. The axial length of the part being received in the cartomizer was significantly smaller than the axial length of the receiving part of the cartomizer.

As D3 did not disclose battery electrical contacts and cartomizer electrical contacts as claimed, it could not disclose the claim feature requiring that those electrical contacts contact each other when the cartomizer is inserted in the chamber.

*Auxiliary request 5 - inventive step starting from D3*

D3 did not disclose that both battery electrical contacts were in the form of spring-loaded pins extending into a portion of the chamber and retractable when pressed by the cartomizer when inserted into the chamber.

This distinguishing feature had the technical effect of providing a protected, stable and reliable connection between the cartomizer and the battery portion. This solved the objective technical problem of providing an improved and more reliable vaporizer in which the contacts were protected from the environment.

The provision of an additional contact in the form of a spring-loaded pin as defined in claim 1 of auxiliary request 5 (e.g. a pogo pin) beside the central pogo pin in the chamber of the battery portion of the INNOKIN iTaste VV device described in D3 would have complicated the manufacturing of the device and increased its costs due to the presence of additional parts. The device

according to D3 allowed inserting the cartomizer in four different rotational positions. To preserve this possibility, the person skilled in the art would not have simply added a second spring-loaded pin but would have had to add a number of such pins and corresponding receiving portions. This would have made the entire device much more complicated and less comfortable to handle.

Moreover, the provision of an additional pogo pin would have created issues of uneven wear, reduced reliability and a poor electrical connection if the additional pogo pin had to contact the bottom ring of the cartomizer body. The person skilled in the art would not have modified the bottom ring itself because this ring was necessary for the insertion of the part on which it was located into the cartomizer. Moreover, a number of substantial modifications of the chamber of the battery portion would have been required if an electrical contact with a second pogo pin had to be established. The external wall of the chamber would have to be excluded from the conductive path, possibly by making it of a non-conductive material; space for a second pogo pin would have to be created in the chamber; and the central pin would have to be redesigned.

If the person skilled in the art had had to provide further pogo pins for contact with the surface of the cartomizer body where magnets were present in the INNOKIN iTaste VV device of D3, these magnets would have had to be sacrificed to provide space for corresponding contacts with the pogo pins. There would have been no motivation for the person skilled in the art to give up the magnets, which secured the cartomizer body to the battery portion. Moreover, such an alternative would have been more costly.

D21 concerned a dense array of pogo pins for the connection of two circuit boards. Its disclosure had no bearing on the provision of spring-loaded pins in the INNOKIN iTaste VV device according to D3.

*Auxiliary request 30b - inventive step starting from D3*

The additional feature of claim 1 of auxiliary request 30b that the battery electrical contacts were provided between the base end of the chamber and the battery housing segment rendered the claimed subject-matter inventive over D3. This feature required the battery electrical contacts in the form of spring-loaded pins to extend down into the battery portion.

The continuous metal wall extending from the base of the chamber in D3 identified by the board was not arranged between the base end of the chamber and the battery housing segment as the wall itself defined the chamber. Moreover, D3 did not describe any details about the interior of the INNOKIN iTaste VV device in this respect.

The person skilled in the art would have had no motivation to provide spring-loaded pins as claimed. If at all, pogo pins would have been provided above the base end of the chamber.

*Request for remittal of the case and admittance of auxiliary request 30d into the appeal proceedings*

In its preliminary opinion, the board identified claim features in the INNOKIN iTaste VV device of D3 in a way which was different from the opposition division in the impugned decision and the arguments of the opponents.

This new interpretation of the device disclosed in D3 constituted special reasons for remittal of the case to the opposition division under Article 11 RPBA. The opposition division should decide on the auxiliary requests ranking lower than the request found allowable in the impugned decision on the basis of the board's interpretation of the claim features. This would allow the parties to be heard at two levels of jurisdiction. A remittal in the current case was also supported by the conclusions in decision T 1628/21 (point 2.3 of the Reasons), which considered a similar situation.

The new interpretation of the device disclosed in D3 by the board also constituted exceptional circumstances for allowing auxiliary request 30d under Article 13(2) RPBA. Claim 1 of auxiliary request 30d was clearly based on a claim of the parent and the grandparent applications as originally filed and on paragraph [0013] of the description of the patent. Auxiliary request 30d was not complex and was *prima facie* allowable. It had not been filed earlier because of the unexpected development of the case and because of the possible negative consequences in parallel proceedings before the Unified Patent Court. Auxiliary request 30d should be admitted, and then the case should be remitted to the opposition division. This would give the opponents plenty of time to prepare a response to the proprietor's filing of auxiliary request 30d.

*Auxiliary request 60c - inventive step starting from D3*

D3 did not disclose a wicking element provided within the cartomizer body, in particular in its heater. The opponents' reference to D3a was not convincing. The transcript and the English translation of D3a were not

correct. The person in the video of D3 mentioned a wick of the spike, meaning the metal tube within the cartomizer body for penetrating the container holding the vaporisable substance. This was confirmed by the correct transcript and translation of D32. Moreover, even if the person in the video had referred to a wick, there was no evidence that such a wick actually existed or where it was located in the INNOKIN iTaste VV device. All remarks regarding the internal structure of the device were mere speculation and did not provide direct and unambiguous disclosure.

Using a wick-based heater as defined in claim 1 allowed for a reliable supply of the vaporisable substance to the heater and hence for a rapid and controlled vaporisation of the vaporisable substance.

Moreover, D3 did not disclose an inhalation tube as defined in claim 1 of auxiliary request 60c. The opponents' assertion that the INNOKIN iTaste VV device disclosed in D3 comprised a number of what could be considered inhalation tubes was without basis. Not every vapour-guiding structure had to be in the form of an inhalation tube as defined in the claim. The central part with a larger cross section of the metal component of the cartomizer provided with the electrical contacts or any other part of the cartomizer body did not form an inhalation tube as in the claim feature either.

*Auxiliary request 70c - inventive step starting from D3*

D3 did not disclose magnets proximate the charging contacts of the INNOKIN iTaste VV device. In D3, the charging took place via a cable plugged into the device.

Such magnets had the effect of securing the charging contacts against corresponding charging contacts of a charger. They contributed to providing an improved and reliable vaporiser.

The person skilled in the art would have had no motivation to provide a charging possibility in a cradle as disclosed in D5 or D16 for the INNOKIN iTaste VV device of D3. This was neither useful nor technically advantageous.

*Auxiliary requests 1 to 4*

The amendments in auxiliary requests 1 to 4 compared with the main request addressed objections of added subject-matter raised by the opponents. The subject-matter of their respective claim 1 was novel over D3 for the same reasons as the main request.

Moreover, D3 did not disclose battery electrical contacts provided between the base end of the chamber and the battery housing segment as defined in auxiliary request 1. The continuous metal wall extending from the base of the chamber in D3 identified by the board was not arranged between the base end of the chamber and the battery housing segment as the wall itself defined the chamber. Moreover, D3 did not disclose any details about the interior of the INNOKIN iTaste VV device in this respect.

*Auxiliary requests 6a, 6 to 17, 18a, 18 to 29 and 30a*

The amendment in auxiliary request 6, compared with the main request, had been carried out to further distinguish the subject-matter of claim 1 from documents of the prior art other than D3. Compared with

auxiliary request 6, in auxiliary request 6a, a dependent claim had been deleted. The amendments in auxiliary requests 10, 11, 12 and 13, compared with the main request, concerned the dependent claims. The subject-matter of the claim 1 of these requests was novel over D3 for the same reasons as the main request.

In addition, D3 did not disclose a wicking element provided within the cartomizer body as defined in claim 1 of auxiliary requests 7 and 8, an inhalation tube as defined in claim 1 of auxiliary request 8 or a magnet proximate the charging contacts as defined in claim 1 of auxiliary request 9. The subject-matter of claims 1 of these requests was novel and inventive over D3.

Auxiliary request 14, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 2. Auxiliary request 15, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 3. Auxiliary request 16, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 4. Auxiliary request 17, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 5. Compared with auxiliary request 17, in auxiliary request 30a, some dependent claims had been deleted. Auxiliary request 18, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 6. Compared with auxiliary request 18, in auxiliary request 18a, a dependent claim had been deleted. Auxiliary request 19, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 7. Auxiliary request 20, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 8. Auxiliary request 21, compared with the main request,

additionally comprised the amendments in auxiliary requests 1 and 9. Auxiliary request 22, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 10. Auxiliary request 23, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 11. Auxiliary request 24, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 12. Auxiliary request 25, compared with the main request, additionally comprised the amendments in auxiliary requests 1 and 13. Auxiliary request 26, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 10, 11 and 12. Auxiliary request 27, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 5 and 10. Auxiliary request 28, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 5 and 11. Auxiliary request 29, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 5 and 12. The subject-matter of claims 1 of these requests was novel and inventive over D3 for the same reasons as the higher-ranking requests.

*Auxiliary requests 30 and 30c*

Auxiliary request 30, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 5 and 13. Claim 1 of auxiliary request 30c read as claim 1 of auxiliary request 30b. The subject-matter of claims 1 of these requests was novel and inventive over D3 for the same reasons as the higher-ranking requests.

*Auxiliary requests 31 to 33, 34a, 34 to 46, 47a, 47, 48a, 48, 49a, 49, 50a, 50b, 50, 50c, 51a, 51, 52a, 52,*

53a, 53, 54a, 54, 55a, 55b, 55, 55c, 56a, 56, 57a, 57, 58a, 58, 59a, 59, 60a, 60b and 60

Auxiliary request 31, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 5, 10, 11 and 12. Auxiliary request 32, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3 and 4. Auxiliary request 33, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 5. Auxiliary request 34, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 6. Auxiliary request 35, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 7. Auxiliary request 36, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 8. Auxiliary request 37, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 9. Auxiliary request 38, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 10. Auxiliary request 39, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 11. Auxiliary request 40, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 12. Auxiliary request 41, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4 and 13. Auxiliary request 42, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5 and 10. Auxiliary request 43, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5 and 11. Auxiliary

request 44, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5 and 12. Auxiliary request 45, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5 and 13. Auxiliary request 46, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 10, 11 and 12. Auxiliary request 47, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6 and 10. Auxiliary request 48, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6 and 11. Auxiliary request 49, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6 and 12. Auxiliary request 50, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6 and 13. Auxiliary request 51, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 10, 11 and 12. Auxiliary request 52, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7 and 10. Auxiliary request 53, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7 and 11. Auxiliary request 54, compared with the main request, additionally comprised the amendments in auxiliary 55, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7 and 13. Auxiliary request 56, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12. Auxiliary request 57, compared with the main request, additionally comprised the amendments in

auxiliary requests 1, 2, 3, 4, 5, 6, 8 and 10. Auxiliary request 58, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8 and 11. Auxiliary request 59, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8 and 12. Auxiliary request 60, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8 and 13. Compared with auxiliary requests 34, 47 to 49, 51 to 54 and 56 to 59, respectively, in auxiliary requests 34a, 47a to 49a, 51a to 54a and 56a to 59a, a dependent claim had been deleted. Compared with auxiliary requests 30a, 30b and 30c, respectively, auxiliary requests 50a, 50b and 50c additionally comprised the amendment in auxiliary request 6. Compared with auxiliary requests 50a, 50b and 50c, respectively, auxiliary requests 55a, 55b and 55c additionally comprised the amendment in auxiliary request 7. Compared with auxiliary requests 50a and 50b, respectively, auxiliary requests 60a and 60b additionally comprised the amendment in auxiliary request 8. The subject-matter of claims 1 of these requests was novel and inventive over D3 for the same reasons as the higher-ranking requests.

*Auxiliary requests 61a, 61, 62a, 62, 63a, 63, 64a, 64, 65a, 65b, 65, 65c, 66a, 66, 67a, 67, 68a, 68, 69a, 69, 70a, 70b and 70*

Auxiliary request 61, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 10, 11 and 12. Auxiliary request 62, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 9 and 10. Auxiliary

request 63, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 9 and 11. Auxiliary request 64, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 9 and 12. Auxiliary request 65, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 9 and 13. Auxiliary request 66, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12. Auxiliary request 67, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 9 and 10. Auxiliary request 68, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 9 and 11. Auxiliary request 69, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 9 and 12. Auxiliary request 70, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 9 and 13. Compared with auxiliary request 61, in auxiliary request 61a, a dependent claim had been deleted. Compared with auxiliary requests 62 to 64 and 66 to 69, respectively, in auxiliary requests 62a to 64a and 66a to 69a, two dependent claims had been deleted. Compared with auxiliary requests 50a, 50b and 50c, respectively, auxiliary requests 65a, 65b and 65c additionally comprised the amendment in auxiliary requests 7 and 9. Compared with auxiliary requests 50a and 50b, respectively, auxiliary requests 70a and 70b additionally comprised the amendment in auxiliary requests 8 and 9. The subject-matter of claims 1 of

these requests was novel and inventive over D3 for the same reasons as the higher-ranking requests.

*Auxiliary requests 71a and 71*

Auxiliary request 71, compared with the main request, additionally comprised the amendments in auxiliary requests 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12. Compared with auxiliary request 71, in auxiliary request 71a, two dependent claims had been deleted. The subject-matter of claims 1 of these requests was novel and inventive over D3 for the same reasons as the higher-ranking requests.

VII. The opponents' arguments, where relevant to this decision, can be summarised as follows.

The auxiliary requests should not be admitted into the appeal proceedings.

*Main request - novelty over D3*

The subject-matter of claim 1 of the main request lacked novelty over D3, which should be considered prior art on its own. D3 was a YouTube video which had been accessed on 21 April 2021 and uploaded on 28 June 2012, as also recognised by the opposition division in the impugned decision.

D3 disclosed a vaporiser as defined in claim 1 of the main request. The vaporiser had a battery electrical contact provided by the lateral wall of the chamber of the cartomiser. This wall started at the chamber end and provided, together with the pin at the base of the chamber, battery electrical contacts at the base end of the chamber as claimed. These contacts engaged

respective cartomizer electrical contacts at the exterior of the cartomizer. The vaporiser also comprised an outer shell commonly shared by the battery housing segment and the cartomizer receiving segment of the battery portion. The white outer shell visible in D3 housed at least part of the cartomizer receiving segment of the battery portion. A heating element was inherently present as D3 disclosed a resistance-based vaporiser, which implied the presence of a heater. Moreover, carbonisation was disclosed as a potential source of problems (at 2:18 of D3). D3 also disclosed a mouthpiece as claimed. It was the whole transparent element within the cartomizer. It extended from the insertion end of the chamber of the battery portion when the cartomizer was inserted in the chamber. It could be seen in the video that the mouthpiece, once inserted in the cartomizer, extended, in use, from the insertion end of the chamber. The end of the mouthpiece reached the insertion end of the chamber or came very close to it.

*Auxiliary request 5 - inventive step starting from D3*

D3 did not disclose that both battery electrical contacts were in the form of spring-loaded pins extending into a portion of the chamber and retractable when pressed by the cartomizer when inserted into the chamber. However, D3 disclosed one of such spring-loaded pins.

The patent did not suggest any technical effect related to the provision of more than one spring-loaded pin. The INNOKIN iTaste VV device disclosed in D3 already had a protected, stable and reliable connection between the cartomizer and the battery portion. The distinguishing feature was therefore a mere alternative

form of contact. Providing a second spring-loaded pin (pogo pin) would have been a simple, obvious matter for the person skilled in the art, not least since there was already one such pin provided. Pogo pins were well known to provide improved electrical connectivity between components moved into connection with one another, as demonstrated by D21. The change from one to two pins was not a major change which would put any requirement on the polar orientation of the cartomizer relative to the battery on insertion. The second cartomizer electrical contact on the INNOKIN iTaste VV device could be the annular ring shown at 7:25. All that needed be retained was the ability to contact this second annular contact at one location around its perimeter. Alternatively, a number of additional pogo pins could be placed for contact next to the magnets of the cartomizer body, as shown at 7:25. Pogo pins could be very small.

*Auxiliary request 30b - inventive step starting from D3*

The additional feature of claim 1 of auxiliary request 30b that the battery electrical contacts were provided between the base end of the chamber and the battery housing segment was disclosed in D3. This feature had to be interpreted in a functional manner, such that the electrical contacts were able to transmit electrical energy between the chamber and the battery housing segment through the base end of the chamber, as done by the Unified Patent Court in the parallel revocation proceedings concerning the opposed patent.

*Request for remittal of the case and admittance of auxiliary request 30d into the appeal proceedings*

There were no exceptional circumstances justifying

remittal. The evidence discussed had been on file for a long time, and the only change concerned claim construction. Moreover, the opponent argued that if the case were remitted, the decision on the admittance of auxiliary request 30d would be left to the opposition division and that this would be unacceptable. Auxiliary request 30d should not be admitted into the appeal proceedings, at least because it had not been filed as soon as possible after the board's communication under Article 15(1) RPBA but only during the oral proceedings as a strategic choice by the proprietor and it raised a number of complex issues. The amendments coming from the description could not be anticipated and might even require an additional search. Alleged consequences in parallel proceedings before the Unified Patent Court could not justify the late filing either. The opponents were not party to these proceedings.

*Auxiliary request 60c - inventive step starting from D3*

D3 disclosed a wicking element, as derivable from D3a (26:15-26:22). D32 had been filed extremely late and should not be admitted into the appeal proceedings. In any case, it was known in the art that a wick absorbed liquid and could therefore improve liquid flow to the heater. This would have prompted the person skilled in the art to provide a wicking element as claimed in the INNOKIN iTaste VV device disclosed in D3. Furthermore, for this device to function, there had to be an inhalation tube in fluid communication with the heating element and the wicking element, from where an aerosol was generated, for directing air to the mouthpiece, where the aerosol was inhaled. Moreover, a number of the components shown for the device could be considered an inhalation tube as defined in claim 1 of auxiliary request 60c. For example, the circular barrel of the

cartomizer body or the exterior of the cartomizer could be considered inhalation tubes.

*Auxiliary request 70c - inventive step starting from D3*

Providing magnets proximate the charging contact of the INNOKIN iTaste VV device would have been a mere design alternative to the charging with a plug. What had to be ensured was that the charger was kept coupled with the device. D5 (Figure 13 and page 11, lines 6 to 9) and D16 (paragraph [0082]) disclosed alternative charging arrangements with magnets as defined in claim 1 of auxiliary request 70c.

*Remaining auxiliary requests*

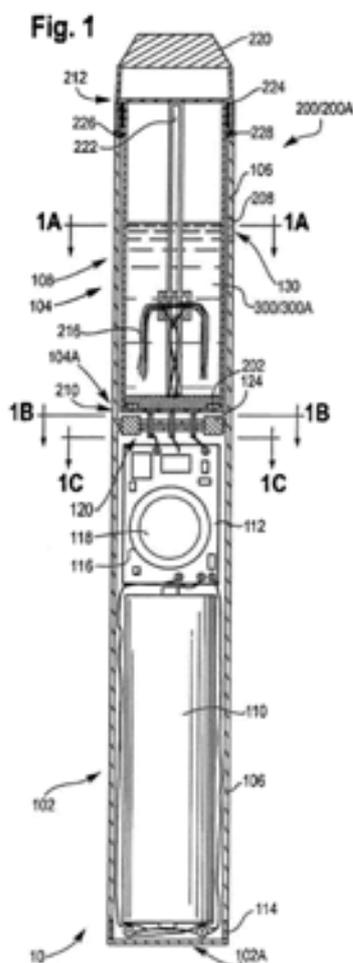
The subject-matter of claim 1 of the remaining auxiliary requests was not novel, or at least not inventive, in view of D3. It was inherent that the INNOKIN iTaste VV device disclosed in D3 included electrical circuitry as defined in claim 1 of auxiliary request 2, otherwise the device would not function. The additional features of claim 1 of auxiliary requests 3 and 4 over the main request were inherently non-limiting. The INNOKIN iTaste VV device disclosed in D3 used magnets as defined in claim 1 of auxiliary request 6 (points [07:42-07:51] and [07:54-07:56] of D3a).

## **Reasons for the Decision**

1. Subject-matter of the patent

The patent is concerned with a vaporiser, typically in the form of an electronic cigarette.

A vaporiser as defined in claim 1 of the patent as granted is schematically represented in Figure 1 of the patent, which is reproduced below.



The vaporiser comprises a battery portion and a cartomizer (200).

The battery portion comprises a battery housing segment (102) housing a battery (110) and being proximate a first end (102A) of the battery portion, a cartomizer receiving segment (104) proximate a second end (104A) of the battery portion and an outer shell (106) commonly shared by the battery housing segment and the

cartomizer receiving segment.

A chamber (108) is provided within at least a portion of the cartomizer receiving segment. The chamber has an insertion end distal from the battery housing segment and a base end proximate to the battery housing segment. Battery electrical contacts are provided at the base end of the chamber.

The cartomizer is configured for insertion into the distal insertion end of the chamber of the cartomizer receiving segment of the battery portion.

The cartomizer comprises a cartomizer body (208) configured to hold a vaporisable substance, a heating element within the cartomizer body configured to heat the vaporisable substance, cartomizer electrical contacts on an exterior of the cartomizer, cartomizer electrical circuitry configured to direct an electrical current between the cartomizer electrical contacts and the heating element, and a mouthpiece in fluid communication with the cartomizer body.

The mouthpiece extends from the insertion end of the chamber when the cartomizer body is inserted in the chamber. The battery electrical contacts are configured to contact the cartomizer electrical contacts when the cartomizer is inserted in the chamber. The heating element is configured to be activated by the electrical current and to heat the vaporizable substance.

The vaporiser further comprises charging contacts at or proximate to the first end of the battery portion.

The claimed features are intended to provide a

practical reusable electronic cigarette.

2. Main request - novelty over D3

2.1 D3 is a video describing a device called INNOKIN iTaste VV. The opposition division concluded that this video was available to the public before the priority date of the patent.

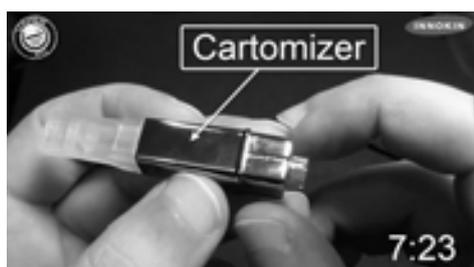
The proprietor contested this finding. It stated that D3 was not available via the internet link indicated by opponent 1.

However, the opposition division, in the impugned decision, concluded that D3 was publicly available before the priority date of the patent and explained in detail why this was the case although the video was not available via the indicated link (points 9.3.4.4 to 9.3.4.10 of the impugned decision). The opposition division even noted that "during the oral proceedings, the proprietor did not raise particular objections against the timely disclosure of D3 and instead used its content for substantial arguments". Absent any reasoned statement by the proprietor on why the finding of the opposition division was wrong, it has to be concluded that D3 was uploaded to the YouTube platform on 28 June 2012 as argued by opponent 1 and found convincing by the opposition division. D3 therefore belongs to the state of the art.

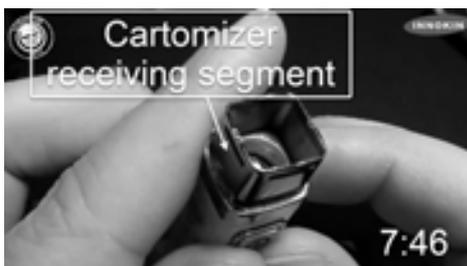
For the purposes of this decision, it is not necessary to establish whether a public prior use of the INNOKIN iTaste VV device described in D3 actually took place. The assessment of novelty and inventive step is made on the basis of the disclosure of D3 alone, i.e. on the basis of the video disclosure itself. Whether D3

reflects the subjective impression of a test user, as the proprietor put it, is therefore of little relevance. What matters is the information that the test user, by showing and describing a tested device, conveys to the person skilled in the art in the video D3.

2.2 As also put forward in the board's communication under Article 15(1) RPBA, D3 discloses a vaporiser (the INNOKIN iTaste VV device shown in its assembled state, with a cap, at 6:55) comprising a battery portion (shown, for instance, at 7:39) and a cartomizer (atomiser shown, for instance, at 7:23). Screenshots of D3 at the indicated times with annotations by the boards are reproduced below.



The battery portion comprises a battery housing segment housing a battery (a battery is housed in the battery portion, as mentioned at 7:39, D3a) and a cartomizer receiving segment (shown, for instance, at 7:45-7:51).



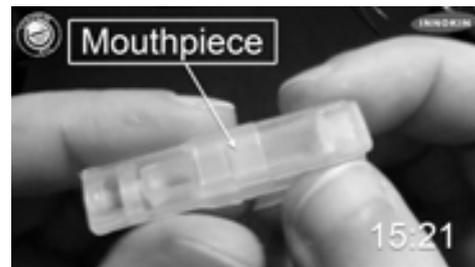
The battery housing segment extends towards a first end close to the screen with the two buttons, whereas the cartomizer receiving segment is at a second end close to the power button. It follows that the battery housing segment is proximate the first end of the battery portion and the cartomizer receiving segment is proximate the second end of the battery portion within the meaning of claim 1 of the main request.

The battery portion further comprises a chamber provided within a portion of the cartomizer receiving segment and having an insertion end distal from the battery housing segment and a base end proximate to the battery housing segment (7:43). The battery portion further comprises electrical contacts, one of which is clearly at the base end of the chamber (central pole shown and mentioned as providing a contact at 7:58-8:19) and an outer shell commonly shared by the battery housing segment and the cartomizer receiving segment (the white outer shell reaches and contacts the battery housing segment as shown at 7:58-8:19).

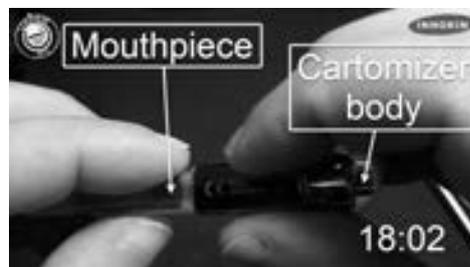


The cartomizer is configured for insertion into the

distal insertion end of the chamber of the cartomizer receiving segment of the battery portion (7:49-7:54) and comprises a cartomizer body (the metal part of the atomiser shown at 13:31-13:49) and a mouthpiece (the atomiser cartridge disclosed in detail at 15:20-17:50), in fluid communication with the cartomizer body (14:24-14-50 and 17:50-18:05).



The cartomizer body is configured to hold a vaporizable substance as it is brought into fluid communication with the atomiser cartridge/mouthpiece (17:51-18:05).

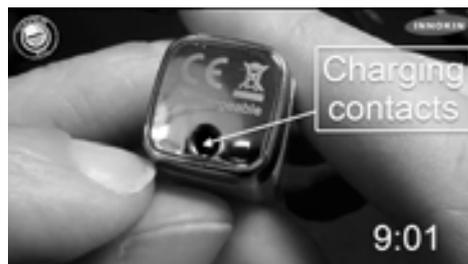


The cartomizer also comprises a heating element within the cartomizer body configured to heat the vaporizable substance (the cartomizer body has a heating element, the resistance of which is indicated on the exterior of the body, see 18:19), cartomizer electrical contacts on the exterior of the cartomizer, and cartomizer electrical circuitry configured to direct an electrical current between the cartomizer electrical contacts and the heating element (18:23-18:30).



The mouthpiece extends from the insertion end of the chamber when the cartomizer body is inserted in the chamber (7:16-7:18 and 18:02-18:08). The battery electrical contacts are configured to contact the cartomizer electrical contacts when the cartomizer is inserted in the chamber, where the heating element is configured to be activated by the electrical current and to heat the vaporizable substance (18:28-18:35 discloses the position of the electrical contacts on the cartomizer; these must contact corresponding contacts of the battery portion for the vaporizer to work).

The vaporiser further comprises charging contacts (8:53-9:05) at or proximate to the first end.



2.3 The patent proprietor argued (and the opposition division shared its view in relation to auxiliary request 25) that there was no disclosure that the INNOKIN iTaste VV device had both electrical contacts at the base end of the chamber.

However, as explained above, D3 (at 18:28-18:35)

discloses the position of the electrical contacts on the cartomizer by showing the location where the resistance of the cartomizer body is measured. A first point of measurement is at the bottom of the cartomizer body, whereas the second point of measurement is at the metal ring around that bottom. The first electrical contact of the cartomizer is therefore the bottom of the cartomizer body. The metal ring, however, is shown in a conductive path with the metal exterior of the cartomizer body and the other metal part of the cartomizer itself. It follows that all these metal parts constitute the second electrical contact of the cartomizer.

The electrical contacts of the battery portion must contact the cartomizer electrical contacts in the assembled state.

As indicated above, D3 shows the chamber of the battery portion at 8:05, for instance. The first electrical contact of the battery portion is necessarily the central pin extending from the bottom (i.e. the base) of the chamber because this element is configured to come into contact with the bottom of the cartomizer body. The second electrical contact of the battery portion must come into contact with the second electrical contact of the cartomizer. The only element of the battery portion which can come into such contact is the external continuous metal wall extending from the base, initially having a circular cross section surrounding the central pin of the battery portion, and then expanding and reaching a square cross section.

Since this continuous external metal wall starts at the base of the chamber, it is a battery electrical contact provided at the base end of the chamber within the

meaning of claim 1 of the main request. In this respect, it is irrelevant where exactly the second electrical contact of the cartomizer contacts the second battery electrical contact in the assembled state.

2.4 As regards the disclosure of an outer shell commonly shared by the battery housing segment and the cartomizer receiving segment of the battery portion, contested by the patent proprietor, the board notes that the claim does not prescribe that the outer shell should completely enclose the battery housing segment and the cartomizer receiving segment. The white outer shell of the INNOKIN iTaste VV device identified above is in contact with and at least partly encloses also the battery housing segment. Hence, it is commonly shared by the battery housing segment and the cartomizer receiving segment within the meaning of claim 1 of the main request.

2.5 The patent proprietor also contested the disclosure of a heating element within the cartomizer configured to heat a vaporisable substance.

The board shares the opponents' view that, in the art, electrical resistance as a parameter for a implies the presence of a heater. The disclosure of carbonisation as a potential source of problems (in the handbook visible at 2:18 of D3), as argued by the opponents, confirms this.

2.6 The patent proprietor also argued that D3 did not disclose cartomizer electrical contacts on the exterior of the cartomizer. However, as explained above in relation to the presence and position of the battery electrical contacts, the cartomizer electrical contacts

of the INNOKIN iTaste VV device are on the exterior of the cartomizer. As regards the bottom of the cartomizer body, this has to be contacted by the central pin of the battery portion and is shown to be accessed from the exterior with a measurement probe (at 18:28-18:35). Hence, this cartomizer electrical contact, as well as the metal parts forming the other cartomizer electrical contact, are on the exterior of the cartomizer within the meaning of claim 1 of the main request.

2.7 The patent proprietor contested that D3 disclosed a mouthpiece extending from the insertion end of the chamber when the cartomizer body is inserted in the chamber.

First of all, as explained above, what is considered to be the mouthpiece in the INNOKIN iTaste VV device is the whole transparent plastic atomiser cartridge disclosed in detail at 15:20-17:50 of D3. The patent proprietor's argument that the axial length of the part of the atomiser cartridge being received in the cartomizer was significantly smaller than the axial length of the receiving part of the cartomizer is not convincing. While it may be accepted that, in the inserted state, the inserted end of the atomiser cartridge, in the axial direction, may not quite reach the insertion end of the chamber of the battery portion, the axial distance, if any, will be small. On the other hand, it is clear that the atomiser cartridge, in the inserted state, extends axially away from the insertion end. This is due to the visible dimensions and relative positions of the cartomizer, the atomiser cartridge and the chamber of the battery portions. The board concludes that the configuration disclosed in D3 is within the general meaning of the expression "the mouthpiece extends from the insertion

end of the chamber when the cartomizer body is inserted in the chamber" of claim 1 of the main request.

2.8 As regards the disclosure in D3 that the battery electrical contacts are configured to contact the cartomizer electrical contacts when the cartomizer is inserted in the chamber, this is a consequence of the above explanation of which elements of the INNOKIN iTaste VV device constitute such electrical contacts.

2.9 In conclusion, D3 discloses a vaporizer with all the features recited in claim 1 of the main request. Hence, the subject-matter of the claim is not novel (Article 54(1) and (2) EPC) over D3. It follows that the patent cannot be maintained on the basis of the main request.

3. Auxiliary request 5 - inventive step starting from D3

In the oral proceedings before the board, the proprietor wished to discuss auxiliary request 5 immediately after the main request. For this reason, the board will deal with this request at this point. The claim requests that the proprietor did not wish to discuss at the oral proceedings are addressed at the end of this decision.

The opponents objected to the admittance of auxiliary request 5 and all other auxiliary requests. However, the board decided to admit all the auxiliary requests except auxiliary request 30d (for the reasons explained below) and considered the admitted requests in substance. In view of the board's conclusions, this does not adversely affect the opponents.

- 3.1 It is common ground that D3 does not disclose that both battery electrical contacts are in the form of spring-loaded pins extending into a portion of the chamber and retractable when pressed by the cartomizer when inserted into the chamber.

For the reasons given for the main request, this is the only distinguishing feature of the subject-matter of claim 1 of auxiliary request 5 over D3, which discloses only one of the battery electrical contacts in the form of a spring-loaded pin as defined in the claim.

- 3.2 The patent proprietor argued that the effect of the distinguishing feature was the provision of a protected, stable and reliable connection between the cartomizer and the battery portion which, in turn, solved the problem of providing an improved and more reliable vaporizer. The board disagrees as there is no reason to believe that the configuration of the contacts of the INNOKIN iTaste VV device as explained above should result in a less protected, less stable or less reliable connection. The contacts of the INNOKIN iTaste VV device are for transmitting low-voltage currents and are arranged, at least to a major extent, within the chamber of the battery portion.

For this reason, the board agrees with the opponents that the objective technical problem solved by the distinguishing feature can only be considered the provision of an alternative form of contact.

- 3.3 As argued by the opponents, the provision of one or more additional spring-loaded pins would have been an obvious alternative to the second contact of the INNOKIN iTaste VV device for the person skilled in the art, especially in light of the presence of one such

pin in this device.

The patent proprietor did not dispute that spring-loaded pins as claimed were known. Indeed, D21 discloses such pins for providing electrical contacts, as argued by the opponents.

The patent proprietor's argument that the provision of additional spring-loaded pins as claimed in the INNOKIN iTaste VV device would have complicated the manufacturing and increased its costs is not convincing. First of all, the board cannot see any major impact on manufacturing in the provision of spring-loaded pins instead of another form of contact. Moreover, even if there were such a negative impact, this would also be the case for the device as claimed. Accepting a foreseeable disadvantage cannot justify the presence of an inventive step.

The patent proprietor's arguments that the provision of additional spring-loaded pins as claimed in the INNOKIN iTaste VV device would have required giving up the magnets, eliminated the possibility of inserting the cartomizer in four different rotational positions and created issues of uneven wear, reduced reliability and a poor electrical connection are not convincing either. As argued by the opponents, this solely depends on the chosen number and positions of the additional spring-loaded pins in the chamber of the battery portion of the INNOKIN iTaste VV device. The person skilled in the art would have had a number of equally obvious possibilities without the disadvantages mentioned by the patent proprietor given the small dimensions which are possible for such known spring-loaded pins (as described in D21).

3.4 In conclusion, the subject-matter of claim 1 of auxiliary request 5 is not inventive (Article 56 EPC) when starting from D3. It follows that the patent cannot be maintained on the basis of auxiliary request 5.

4. Auxiliary request 30b - inventive step starting from D3

After auxiliary request 5, the proprietor wished to discuss auxiliary request 30b in the oral proceedings.

Compared with claim 1 of auxiliary request 5, claim 1 of auxiliary request 30b, except for a purely redactional amendment, further specifies that the battery electrical contacts are provided between the base end of the chamber and the battery housing segment.

The board concurs with the interpretation of this feature by the opponents. As it is worded, the claimed feature requires that the electrical contacts may transmit electrical energy between the chamber and the battery housing segment, through the base end of the chamber. Spring-loaded pins extending partly in the chamber and partly in the battery housing segment are not defined in the claim.

The battery electrical contacts of the INNOKIN iTaste VV device are intended to transmit energy from the battery portion to the chamber through the end of the battery portion. Spring-loaded pins as battery electrical contacts would have to retain this function for the device to work properly. Hence, the additional feature of claim 1 of auxiliary request 30b is obvious.

It follows that the subject-matter of claim 1 of

auxiliary request 30b is not inventive (Article 56 EPC) when starting from D3, and the patent cannot be maintained on the basis of auxiliary request 30b either.

5. Request for remittal of the case and admittance of auxiliary request 30d into the appeal proceedings

In the oral proceedings, after the discussion of auxiliary request 30b, the proprietor filed auxiliary request 30d. It requested remittal of the case before auxiliary request 30d was considered or that auxiliary request 30d be admitted into the appeal proceedings, with the case possibly being remitted after admittance of the claim request.

- 5.1 In accordance with Article 111(1) EPC, in deciding on an appeal, the board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution. Under Article 11 RPBA, the board must not remit a case to the department whose decision was appealed for further prosecution unless special reasons present themselves for doing so.

The board sees no special reasons for remitting the case. The fact that the board assessed the disclosure of the prior art differently from the opposition division does not constitute such special reasons. The possibility of the board arriving at a different conclusion than the department of first instance when assessing the disclosure of the prior art under consideration is inherent in the review of the decision under appeal in a judicial manner, which is the primary object of the appeal proceedings (Article 12(2) RPBA),

and as such is not special or extraordinary.

The situation in T 1628/21, referred to by the proprietor, was different. Among other things, in that case all parties requested a remittal, whereas the opponents in the case at hand are against a remittal.

Moreover, the board considers that remitting the case to the opposition division before deciding on the admittance of a claim request filed only during the appeal proceedings would not be appropriate as it is up to the board, and not the opposition division, to decide on its admittance. The procedural framework for the admittance of such requests into the appeal proceedings is different from the one applicable in the opposition proceedings, and a claim request filed for the first time in the appeal proceedings should be subject to the rules of procedure applicable to these proceedings.

In conclusion, the request for remittal is refused, pursuant to Article 11 RPBA.

- 5.2 Auxiliary request 30d was filed during the oral proceedings, hence after the communication pursuant to Article 15(1) RPBA.

In line with Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA must, as a rule, not be taken into account unless there are exceptional circumstances justified with cogent reasons by the party concerned.

The proprietor argued that the board assessed the disclosure of the prior art differently than the

opposition division and the opponents.

The board does not consider this to constitute exceptional circumstances. As indicated above, the possibility of the board arriving at a different conclusion than the department of first instance when assessing the disclosure of the prior art under consideration is inherent in the review of the decision under appeal in a judicial manner, which is the primary purpose of the appeal proceedings (Article 12(2) RPBA).

Moreover, the board communicated its preliminary opinion on the case, including regarding its assessment of the prior-art disclosure, in the communication dated 8 September 2025. After having received that communication, the proprietor filed further submissions and auxiliary claim requests. However, auxiliary request 30d was only filed during the oral proceedings before the board on 11 November 2025, and the patent proprietor even waited until the very last possible moment to do so, namely after the conclusion of the discussion on all higher-ranking requests. Moreover, as the opponents noted, claim 1 of auxiliary request 30d is not merely based on a combination of claims of the patent as granted but includes elements of the description. The late filing and the nature of the amendments in auxiliary request 30d made it impossible for the opponents to properly respond to it in the oral proceedings without requesting an adjournment of the oral proceedings as an additional search may have been necessary. This would have run counter to procedural economy.

The board acknowledges that a patent proprietor may have to coordinate the amendments made to its claim requests in the current proceedings with those made in

parallel proceedings before the Unified Patent Court. However, any possible associated constraints cannot be invoked to the detriment of the opponents in the case at hand, which are not even parties to the proceedings before the Unified Patent Court.

For these reasons, auxiliary request 30d was not admitted into the appeal proceedings under Article 13(2) RPBA. As a consequence, the request for remitting the case after admittance of auxiliary request 30d was not granted either.

6. Auxiliary request 60c - inventive step starting from D3

The proprietor wished to discuss auxiliary request 60c immediately after auxiliary request 30d.

Compared with claim 1 of auxiliary request 30b, claim 1 of auxiliary request 60c further defines that the vaporizer comprises magnets to retain the cartomizer within the chamber and that the cartomizer comprises an inhalation tube in fluid communication with the heating element and a wicking element, where the inhalation tube extends from the heating element and the wicking element to the mouthpiece.

D3 discloses magnets as defined in the claim (7:43-7:52). As argued by the opponents, for the INNOKIN iTaste VV device to work, air must be directed from the heating element to the mouthpiece, where it is inhaled. The metal part of the cartomizer, housing the cartomizer body and shown at 14:19 of D3, for example, contributes to directing air from the heating element within the cartomizer body to the mouthpiece. This metal part is an inhalation tube within the meaning of claim 1 of auxiliary request 60c.

As regards the wicking element as defined in the claim, it is common ground that the person illustrating the INNOKIN iTaste VV device in D3 mentions a wick while describing the cartomizer body. Even accepting the patent proprietor's argument that it is not directly and unambiguously derivable which element the person in the video of D3 means by the term "wick", no inventive step can be ascribed to the claimed feature. The person skilled in the art, simply by being prompted by the information that an element functioning as a wick may be present in the INNOKIN iTaste VV device, would have provided a wick within the cartomizer body as generally defined in claim 1 of auxiliary request 60c as one obvious design option. Therefore, it is of no relevance for the outcome of the assessment of inventive step whether D3a or D32 is the correct transcription of D3 and whether D32 should be admitted into the appeal proceedings.

In conclusion, the subject-matter of claim 1 of auxiliary request 60c is not inventive (Article 56 EPC) when starting from D3, and the patent cannot be maintained on the basis of auxiliary request 60c either.

7. Auxiliary request 70c - inventive step starting from D3

The proprietor wished to discuss auxiliary request 70c immediately after auxiliary request 60c.

Compared with claim 1 of auxiliary request 60c, claim 1 of auxiliary request 70c further defines that the vaporizer comprises a magnet proximate to the charging contacts.

As the proprietor submitted, such a magnet has the effect of securing the charging contacts against corresponding charging contacts of a charger. This ensures that the charging takes place in a reliable way.

In the INNOKIN iTaste VV device, charging takes place with a plug securely fixed to a corresponding socket in the battery portion. This configuration also ensures that the charging is reliable.

Hence, contrary to the proprietor's assertion, the claimed magnet does not increase reliability or provide any improvement to charging over the INNOKIN iTaste VV device. The objective technical problem is merely the provision of an alternative charging arrangement.

As the opponents pointed out, securing charging contacts of an electronic cigarette with corresponding contacts of a charger by means of a magnet was known from D5 (claims 1 to 4) and D16 (paragraph [0082]). In view of the teaching of D5 or D16, the person skilled in the art would have provided the INNOKIN iTaste VV device with a magnet proximate to the charging contacts as an obvious design alternative. This is all the more so because D3 itself hints at different kinds of charging equipment (8:56-9:06).

In conclusion, the subject-matter of claim 1 of auxiliary request 70c is not inventive (Article 56 EPC) when starting from D3, and the patent cannot be maintained on the basis of auxiliary request 70c either.

8. Remaining auxiliary requests - novelty and inventive step in view of D3

- 8.1 Compared with claim 1 of the main request, claim 1 of auxiliary request 2 further specifies that the vaporizer further comprises battery electrical circuitry housed within the battery housing segment and operable to direct an electrical current between the battery, the battery electrical contacts, the cartomizer electrical contacts, the heating element and the inserted cartomizer.

The person skilled in the art would realise that such circuitry is inherently present in the INNOKIN iTaste VV device disclosed in D3 since it is necessary for the device to function. In this respect, the battery portion comprises an activation button and a display.

It follows that the subject-matter of claim 1 of auxiliary request 2 is not novel (Article 54(1) and (2) EPC) over D3.

- 8.2 The subject-matter of claim 1 of each of auxiliary requests 3 and 4 does not differ, in substance, from the subject-matter of claim 1 of the main request.

It follows that the subject-matter of claim 1 of auxiliary requests 3 and 4 is not novel (Article 54(1) and (2) EPC) over D3.

- 8.3 Compared with claim 1 of the main request, claim 1 of auxiliary request 7 further specifies that a wicking element is provided within the cartomizer body.

The subject-matter of claim 1 of auxiliary request 7 is not inventive (Article 56 EPC) when starting from D3

for the same reasons as the subject-matter of claim 1 of auxiliary request 60c.

- 8.4 Claims 1 of the remaining auxiliary requests do not comprise more features than claims 1 of the requests considered in detail above.

It follows that none of the remaining requests is allowable for lack of novelty (Article 54(1) and (2) EPC) over D3 or inventive step (Article 56 EPC) when starting from D3.

9. In conclusion, none of the proprietor's requests can form the basis for the maintenance of the patent. Hence, the patent has to be revoked (Article 101(3) (b) EPC).

**Order**

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

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

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated