

Internal distribution code:

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

**Datasheet for the decision
of 22 June 2026**

Case Number: T 0077/25 - 3.5.01

Application Number: 13194529.7

Publication Number: 2712511

IPC: A24F40/44

Language of the proceedings: EN

Title of invention:

An electrically heated smoking system having a liquid storage portion

Patent Proprietor:

Philip Morris Products S.A.

Opponent:

Imperial Tobacco Limited

Headword:

Electrically heated smoking system with liquid storage portion/PHILIP MORRIS PRODUCTS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by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



Beschwerdekammern

Boards of Appeal

Chambres de recours

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

Case Number: T 0077/25 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 22 June 2026

Appellant: Imperial Tobacco Limited
(Opponent) 121 Winterstoke Road
Bristol BS3 2LL (GB)

Representative: Mewburn Ellis LLP
Aurora Building
Counterslip
Bristol BS1 6BX (GB)

Respondent: Philip Morris Products S.A.
(Patent Proprietor) Quai Jeanrenaud 3
2000 Neuchâtel (CH)

Representative: Abitz & Partner
Postfach 86 01 09
81628 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 14 November 2024
concerning maintenance of the European Patent
No. 2712511 in amended form.

Composition of the Board:

Chairman M. Höhn
Members: I. Kürten
E. Mille

Summary of Facts and Submissions

I. The opponent filed an appeal against the interlocutory decision of the opposition division maintaining the patent in amended form.

II. The parties were summoned to oral proceedings before the Board. In a communication pursuant to Article 15(1) RPBA, the Board set out its provisional opinion.

III. By letter dated 15 June 2026, the patent proprietor's representative submitted the following statement:

"On behalf of the patent proprietor, we hereby withdraw approval of the text of the patent as maintained by the Opposition Division in its decision dated November, 14 2024 and do not maintain any of the auxiliary requests filed.

We understand that this withdrawal of approval will lead to the revocation of the patent and termination of the appeal proceedings (Article 113(2) EPC, Case Law of the Boards of Appeal, 11th edition, section IV.D.2).

We further withdraw our request for oral proceedings.

Finally, we respectfully request a partial reimbursement of the appeal fee (R. 103 EPC) to our account ..."

IV. The oral proceedings were subsequently cancelled.

Reasons for the Decision

1. Under Article 113(2) EPC the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the patent proprietor of the patent.
2. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent as granted or as maintained, withdraws all pending requests and requests the revocation of the patent.
3. There is therefore no text of the patent on the basis of which the Board can consider the appeal. Under these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, IV.D.2).
4. As revocation of the patent is the opponent's main request, and no other issues need to be addressed in this case, this decision can be taken without holding oral proceedings.
5. As regards the patent proprietor's request for a partial reimbursement of the appeal fee, the Board notes that the patent proprietor is not an appellant and has not paid an appeal fee in these proceedings. Consequently, there is no appeal fee that could be reimbursed to it, and therefore no legal basis for such a request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The request for partial reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



T. Buschek

M. Höhn

Decision electronically authenticated