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**Datasheet for the decision
of 17 April 2026**

Case Number: T 0501/26 - 3.5.01

Application Number: 21166610.2

Publication Number: 3864987

IPC: A24F40/50, A61M11/04, A61M15/06

Language of the proceedings: EN

Title of invention:
NON-COMBUSTION FLAVOR INHALER

Patent Proprietor:
Japan Tobacco Inc.

Opponents:
Imperial Tobacco Limited
Philip Morris Products S.A.

Headword:
Non-combustion flavor inhaler/JAPAN TOBACCO

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Basis of decision - text or agreement to text withdrawn by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
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Case Number: T 0501/26 - 3.5.01

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

Appellant: Imperial Tobacco Limited
(Opponent 1) 121 Winterstoke Road
Bristol BS3 2LL (GB)

Representative: Haseltine Lake Kempner LLP
One Portwall Square
Portwall Lane
Bristol BS1 6BH (GB)

Appellant: Philip Morris Products S.A.
(Opponent 2) Quai Jeanrenaud 3
2000 Neuchâtel (CH)

Representative: HGF
HGF Limited
4th Floor, 1 City Square
Leeds LS1 2ES (GB)

Respondent: Japan Tobacco Inc.
(Patent Proprietor) 1-1, Toranomon 4-chome
Minato-ku
Tokyo 105-6927 (JP)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 23 January 2026
concerning maintenance of the European Patent
No. 3864987 in amended form.**

Composition of the Board:

Chairwoman I. Kürten
Members: R. Moser
 C. Schmidt

Summary of Facts and Submissions

I. Opponent 1 (Imperial Tobacco Limited) and opponent 2 (Philip Morris Products S.A.) each filed a notice of appeal against the interlocutory decision of the opposition division maintaining the patent in amended form on the basis of auxiliary request 33.

II. By letter of 26 March 2026, the patent proprietor submitted the following statement:

"We request that the opposed patent is revoked without going into substantive issues (T 186/84) as the patentee no longer approves of the text of the patent as granted nor of the text of the patent as maintained by the Opposition Division with the interlocutory decision of January 23, 2026, and the patentee does not intend to submit any other text for the maintenance of the patent and withdraws all requests submitted in the opposition proceedings."

III. By letter of 10 April 2026, opponent 2 stated that "we look forward to receiving confirmation that the appeal proceedings have been closed with revocation of the Patent".

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 and withdraws all pending requests.

There is therefore no text of the patent on the basis of which the Board can consider the appeal. In 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).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairwoman:



T. Buschek

I. Kürten

Decision electronically authenticated