



European Patent Office
Postbus 5818
2280 HV Rijswijk
NETHERLANDS
Tel: +31 70 340 2040



Potter Clarkson
Chapel Quarter
Mount Street
Nottingham NG1 6HQ
ROYAUME-UNI

Formalities Officer
Name: Rossi, Cinzia
Tel: +31 70 340 - 3322
or call
+31 (0)70 340 45 00

Application No. / Patent No. 14 732 735.7 - 1105 / 3 073 846 /	Ref. J691/WO/EP/ DIV1/Njoy	Date 13.10.2025
Proprietor Njoy, Inc.		

Decision revoking the European Patent (Art. 101(2) and 101(3)(b) EPC)

The Opposition Division - at the oral proceedings dated 23.09.2025 - has decided:

European Patent No. EP-B- 3 073 846 is revoked.

The reasons for the decision are enclosed.

Possibility of appeal

This decision is open to appeal. Attention is drawn to the attached text of Articles 106 to 108 and Rules 97 to 98 EPC.

Opposition Division:

Chairman: Creux, Sophie
2nd Examiner: Granet, Nicolas
1st Examiner: Dimoula, Kerasina



Rossi, Cinzia
Formalities Officer
Tel. No.: +31 70 340-3322

Branch at The Hague

Enclosure(s): 10 page(s) reasons for the decision (Form 2916)
Wording of Articles 106 - 108 and Rules 97-98 EPC (Form 2019)
Minutes of oral proceedings

to EPO postal service: 08.10.25

I. Summary of Facts and Submissions

- 1 European patent 3 073 846 having the title "COMPOSITIONS, DEVICES, AND METHODS FOR NICOTINE AEROSOL DELIVERY" is based upon European patent application No. 14 732 735.7 filed on 21-05-2014. It claims priority of US 201361826318 filed on 22-05-2013, US 201361856374 filed on 19-07-2013, US 201461969650 filed on 24-03-2014 and US 201461971340 filed on 27-03-2014.

The mention of the grant of the patent has been published in the European Patent Bulletin of 05-07-2023. Proprietor of the patent is
Njoy, Inc.
15211 North Kierland Blvd.
Suite 200
Scottsdale, AZ 85254
US.
- 2 Notice of opposition has been filed by
Philip Morris Products S.A.
Quai Jeanrenaud 3
2000 Neuchâtel
CH
on 04-04-2024.
- 3 Opponent (O) requested revocation of the patent in its entirety based on the grounds of Article 100(a) EPC for lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC), Article 100(b) for Insufficiency of Disclosure (Article 83 EPC) and Article 100(c) for Added Subject-Matter (Article 123(2) EPC). A conditional request for oral proceedings was made.
- 4 Proprietor (P) replied to the Notice of Opposition with the letter received on 16-08-2024 and requested the rejection of the opposition (Article 101(2) EPC) and the maintenance of the patent as granted as Main Request (MR) or on the basis of Auxiliary Requests 1 to 13 (AR1-AR13), which were submitted with the same letter. A conditional request for oral proceedings was made.
- 5 On 02-12-2024 the opposition division issued a summons to attend oral proceedings on 23-09-2025.

6 With letter dated 23-07-2025, P provided further arguments on the matters of added-subject matter, sufficiency of disclosure, novelty, inventive step and priority with respect to the MR and AR1-AR13. With this letter, P also introduced new ARs 2a to 5a and 8a to 13a and requested these auxiliary requests to be considered in the order of AR2a-AR5a, AR6, AR8a-AR13a, AR1-AR5 and AR7-AR13.

7 With letter dated 23-07-2025, O provided further arguments on the matters of added-subject matter, sufficiency of disclosure, novelty, inventive step and priority with respect to the MR and AR1-AR13, as well. With the same letter, O filed documents D12b, D15 and D16 and requested documents D12b and D15 to be admitted into the proceedings.

8 With letter dated 04-09-2025, P conditionally withdrew AR4a, AR5a, AR10a, AR11a and AR13a on the condition that they would be replaced by AR4b, AR5b, AR10b, AR11b and AR13b filed with the same letter. P requested the auxiliary requests to be considered in the order of AR2a, AR3a, AR4b, AR5b, AR6, AR8a, AR9a, AR10b, AR11b, AR12a, AR13b, AR1-5, AR7-13.

9 On 23-09-2025, oral proceedings were held.

10 The decision is based on the following requests:

Main Request

Description, Pages

2-25 of the patent specification

Claims, Numbers

1-15 of the patent specification

Drawings, Sheets

1-16 of the patent specification

AR1 filed as AR5b

AR2 filed during Oral Proceedings

AR3 filed as AR2a filed on 23-07-2025

AR4 filed as AR3a filed on 23-07-2025

AR5 filed as AR4b filed on 04-09-2025

AR6 filed as AR6 filed with reply to the Notice of Opposition

AR7 filed as AR8a filed on 23-07-2025

AR8 filed as AR9a filed on 23-07-2025

AR9 filed as AR10b filed on 04-09-2025

AR10 filed as AR11b filed on 04-09-2025

AR11 filed as AR12a filed on 23-07-2025

AR12 filed as AR13b filed on 04-09-2025

AR13 filed as AR1 filed with reply to the Notice of Opposition

AR14 filed as AR2 filed with reply to the Notice of Opposition

AR15 filed as AR3 filed with reply to the Notice of Opposition

AR16 filed as AR4 filed with reply to the Notice of Opposition

AR17 filed as AR5 filed with reply to the Notice of Opposition

AR18 filed as AR7 filed with reply to the Notice of Opposition

AR19 filed as AR8 filed with reply to the Notice of Opposition

AR20 filed as AR9 filed with reply to the Notice of Opposition

AR21 filed as AR10 filed with reply to the Notice of Opposition

AR22 filed as AR11 filed with reply to the Notice of Opposition

AR23 filed as AR12 filed with reply to the Notice of Opposition

AR24 filed as AR13 filed with reply to the Notice of Opposition

11 The claims under consideration are attached to this decision.

II. Reasons for the decision

1 Admissibility of Opposition

The Opposition is admissible because it meets all the requirements of Articles 99(1) and 100 EPC and Rules 3(1) and 76(2) EPC.

2 Main Request

2.1 Article 100(c) EPC and Added Subject-Matter (Article 123(2) EPC)

2.1.1 O objected to granted claims 1, 2 and 7-13 for lack of support in the application as originally filed.

2.1.2 P argued that, when considering the teaching of the application as a whole, the subject-matter of granted claim 1 is directly and unambiguously disclosed and that granted claim 1 provides no new technical teaching over the application as filed. P identified paragraphs [006], [038]-[040] and [047] as providing basis for the features of granted claim 1. P submitted that originally filed claims 1, 3, 7 and 8 also specify these features whereas the example compositions are all according to claim 1 and thus provide a clear pointer for the features to be taken together from the recited parts of the original application.

Specifically, with respect to the feature of lactic acid, P alleged that the skilled person, reading the application as a whole, would have understood that lactic acid is the most preferred ion pairing agent and it could be combined with any of the other features disclosed in the application.

With respect to the application of the range of 80% to 98% by weight of solvent specifically to solvents including one or more alcohol functional groups, P identified paragraphs [038] to [040] as basis, and argued that this combination is further supported by all 18 of the example compositions and claim 3 as filed. According to P, the amendment of the amount of solvent with a range selected from the description corresponds to selecting one element from a list of converging alternatives and should be thus seen as a restriction of the feature of solvent amount in claim 1 and not as singling out from among a plurality of distinct options. P further stated that said convergent restriction is supported by the application as filed as the conditions set out in T1621/16 are fulfilled: the combination is not associated with undisclosed technical contribution and the example compositions including 80% to 98% solvent act as a clear pointer.

With respect to the pH range of pH 7 to pH 11, P submitted that it is based on a converging list in paragraph [046] of the application as filed and results from the allowable (according to established Case Law) combination of the upper limit of a less preferred broad range with a lower limit of a most preferred narrow range.

With respect to the objected to by O missing feature of the pH definition in the claims, P argued that the skilled person would understand that the pH is measured as described in paragraph [046]. Accordingly the omission of this feature from claim 1 does not lead to an allowable intermediate generalisation as there is no conflict between the definition of pH in the claims and the description and no additional limiting features are read into the claim by interpreting the pH in light of the definition of paragraph [046].

P concluded that no new technical teaching is given by claim 1 of the MR over the application as filed and that, from the standpoint of the skilled person, the application as a whole directly and unambiguously discloses a composition with all the features of claim 1.

2.1.3 The Opposition Division is of the view that originally filed claim 1 together with originally filed claim 7 provide support for a composition comprising nicotine, ion pairing agent comprising lactic acid and a solvent, the composition producing by vaporization and condensation an aerosol wherein at least 85% of the nicotine by weight is in particulate phase of the aerosol.

However, the remaining features of claim 1 of the MR require selections from different parts of the original disclosure:

As far as the feature of "solvents comprising one or more alcohol functional groups" is concerned, the Opposition Division considers that the introduction of this feature in claim 1 involves a selection: a solvent comprising one or more alcohol functional groups needs to be selected from paragraph [038], whereas such a solvent (i.e. an alcohol) in general is not disclosed as preferred anywhere in the application as originally filed. Indeed, in paragraph [038] several other solvents that are not alcohols are equally disclosed whereas in paragraphs [006] and [038], among alcohols, specifically glycerol, propylene glycol and polyethylene glycol are exemplified. These specific solvents and only these are used in the example compositions and are also recited in originally filed claim 3. It follows that in order to arrive at the subject-matter of claim 1, the solvent type needs to be selected from a long list of possible solvents. Further, the range of 80% to 98% by weight corresponding to the amount of solvent needs to be also selected from the disclosed in paragraph [039] ranges.

Also the pH of the composition has to be defined. The range of a pH of about pH 7 to pH 11 which results from the combination of the preferred lower limit of pH 7 with the least preferred upper limit of pH 11, from the disclosed in paragraph [046] pH ranges, corresponds to a further selection. It follows that subject-matter from different parts of the description, i.e. paragraph [038], paragraph [039] and paragraph [046] has been selected and a combination has

been created that does not result directly and unambiguously from the application as filed. The examples of the application cannot provide a pointer to the claimed pH range, either, as only the value of pH of 7.4, for composition LC3, is used (see paragraph [0101]) and of pH of 7.7 to 7.8, in compositions 1-12 of Example 3 (see paragraph [0112]). The examples cannot provide a pointer to the use of any alcohol as a solvent either, as specifically glycerol, propylene glycol and polyethylene glycol are only used in the compositions of these examples.

On the contrary, the Opposition Division does not share the view of O that because paragraph [046] explicitly requires the pH to be based on 1:3 by volume mixtures of non-aqueous compositions and water, the absence of this limitation from claim 1 upon the introduction of a pH range represents an intermediate generalisation, but rather adopts the opinion of P that the skilled person would understand that the pH of the composition would be measured as set out in paragraph [046]. Thus this definition is implicitly included in the claims and inversely no additional or limiting features are read into the claim by interpreting the pH in light of paragraph [046].

- 2.1.4 The Opposition Division thus concludes that the combination of the features of "pH of about pH 7 to pH 11", "about 80% to about 90% by weight of at least one solvent", "the at least one solvent includes one or more alcohol functional groups" of granted claim 1 does not find direct and unambiguous basis in the application as originally filed. Dependent claims 2 and 7-13, which involve even further combinations of features, do not appear to find basis in the originally filed application either. The Opposition Division thus decides that the MR is not allowable under Article 123(2) EPC.

3 **Auxiliary Request 1**

3.1 **Admissibility of AR1**

3.1.1 AR1 was filed as AR5b with P's submissions dated 04-09-2025.

3.1.2 P argued that request AR1 was filed to replace AR5a that had been timely filed (with P's submissions dated 23-07-2025) and with the aim to address objections under Article 123(2) EPC. Specifically, AR1 should be seen as an effort to correctly address O's objections on added matter (i.e. by limiting the number of selections of features present in the MR) and remedy, in this way, the deficiencies of AR5a but also to address O's objections on extension of protection beyond the granted claims (Article 123(3) EPC), relating to the previous versions of this request, namely AR5 and AR5a.

3.1.3 O counter argued that as objections based on Article 123(3) EPC were already raised in the Summons, AR1 could and should have been filed already in July, it is thus late filed. Additionally, O submitted that this request does not satisfy the requirements of prima facie allowability, as it does not fulfil the requirements of Article 123(2) EPC and Article 123(3) EPC either.

3.1.4 The Opposition Division decides to admit AR1 to the proceedings as this request is seen as an effort to overcome objections already present in the summons but also objections raised by O with respect to AR5a that had been timely filed.

3.2 **Added subject-matter (Article 123(2) EPC)**

3.2.1 Claim 1 of AR1 is based on claim 1 as granted with restriction of the pH to the sub-range of 7 to 8 and with the further specification that the at least on solvent that includes one or more alcohol functional groups comprises at least one alcohol chosen from glycerol, propylene glycol, polyethylene glycol or any combination thereof.

3.2.2 P identified originally filed claims 1, 3, 7 and 8 as providing basis for claim 1 of AR1. Further, according to P, the example compositions, all of which having a pH falling within the new pH range, using lactic acid as ion pairing agent and comprising a solvent that falls exactly within the claimed range, said solvent including the recited alcohols, provide a clear pointer to the combination of claim 1 of AR1.

3.2.3 The Opposition Division considers that the feature of the restricted pH range of 7 to 8 finds direct and unambiguous basis in the application as originally filed and specifically in originally filed claim 8. The lactic acid as ion pairing agent finds basis in originally filed claim 7 and their combination is also considered as directly derivable due to the example compositions all having a pH of 7.4 and using lactic acid.

However, the remaining features of claim 1 of AR1 are found to add subject-matter. Specifically, claim 1 can be only interpreted as requiring the composition to comprise solvents that include one or more alcohol functional groups (i.e. solvents that are alcohols) in an amount of 80-98% by weight. This means that further (non-alcohol) solvents can be also present in the composition, but then the overall amount of solvents will be beyond the amount of 98% by weight of the composition. Also, according to the wording of claim 1, the at least one alcohol solvent comprises one or more of the recited alcohols, which means that further alcohols can be also included (e.g. ethanol). This subject-matter is

different compared to what is disclosed by originally filed claims 1 and 3 and paragraphs [038] and [039] in combination for the following reasons: in paragraph [039] the sub-range of about 80% to about 98% refers to the entire amount of solvents in the composition and not only to solvents including one or more alcohol functional groups, whereas these solvents can be chosen from the long list of solvents recited in paragraph [038]. For example, based on the combination of paragraphs [038], [039] and claims 1 and 3, a composition comprising glycerol and ethanol as alcohol functional group containing solvents but also a fatty acid ester as further solvent, in a cumulative amount of 80% to 98% by weight of the composition can be contemplated. The requirement that the alcohol functional group containing solvents only amount to from 80% to 98% is not derivable from the application as originally filed in combination with the alcohol functional groups to be other than the glycerol, propylene glycol and polyethylene glycol. Looking at the combination of claims 1 and 3 as originally filed, these two claims do not allow for alcohols other than one or more of the glycerol, propylene glycol, polyethylene glycol and thus the combination of these two claims with paragraph [039] fails to depict the subject-matter of claim 1 of AR1.

- 3.2.4 The Opposition Division thus concludes that claim 1 of AR1 does not find direct and unambiguous basis in the application as originally filed and decides that AR1 is not allowable under Article 123(2) EPC.

4 **Auxiliary Request 2**

4.1 **Admissibility of AR2**

4.1.1 AR2 was filed during Oral Proceedings.

4.1.2 P identified the basis for claim 1 of AR2 in claim 1 of AR3a with incorporation of the subject-matter of originally filed claim 3 to claim 1 of the latter request. P submitted that the interpretation of claim 1 and specifically whether the amount of from about 80% to about 98% refers to the alcohol functional groups containing solvent or the overall solvent amount in the composition, had not been clear until the discussion of AR1 and thus, despite the filing of this request at a late stage, the request should be admitted into the proceedings. In this context, P also argued that this interpretation of claim 1 is not consistent with paragraph [039] of the description. Besides, according to P, the limitation of the recited amount of solvent to the entire amount of solvents in the composition

and the specification of the alcohols addresses the O's objections and corrects the added subject-matter problem of the previous requests and thus AR2 should be for this reason too admitted into the proceedings.

4.1.3 O counter argued that, as the request was filed so late in the procedure, the requirement of clear allowability should be fulfilled but is not as this request does not prima facie solve the under Article 123(2) EPC problem and it also opens a new problem under Article 123(3) EPC. O also pointed out that the added subject-matter problem in dependent claims was not addressed in this request.

4.1.4 The Opposition Division decides to admit AR2 to the proceedings as this request is seen as an effort to overcome objections under Article 123(2) EPC raised during oral proceedings with respect to AR1 and because AR2 is based on AR3a that had been timely filed (with P's submissions dated 23-07-2025).

4.2 **Extension of protection (Article 123(3) EPC)**

The Opposition Division considers the attribution of the amount of from about 80% to about 98% by weight of the composition to the amount of any solvent in the composition instead of the one or more solvents including an alcohol functional group, as in granted claim 1, to lead to unallowable broadening of the scope of protection. A composition with an undefined, e.g. 10%, amount of alcohol solvent falls within the scope of claim 1 of AR2, whereas it was outside the scope of granted claim 1. The Opposition Division thus decides that AR2 is not allowable under Article 123(3) EPC.

5 **Further Auxiliary Request**

5.1 **Admissibility and allowability of further auxiliary requests**

5.1.1 O requested not to admit the auxiliary requests filed with P's letter dated 04-09-2025 as late filed and not prima facie allowable.

5.1.2 The Opposition Division decides to admit these requests into the proceedings. At the time they were filed, they were trying to correct a deficiency noted by O in the previous auxiliary requests. The same reasoning as for admissibility of AR2 thus applies.

5.1.3 The Opposition Division decides that all further requests on file contain at least one deficiency as discussed during the opposition proceedings with respect to the MR, AR1 and AR2, and are therefore not allowable under Article 123(2) and/or Article 123(3) EPC.

5.1.4 Specifically, requests AR3 (filed as AR2a), AR5 (filed as AR4b), AR6 (filed as AR6), AR7 (filed as AR8a), AR9 (filed as AR10b), AR10 (filed as AR11b), AR11 (filed as AR12a), AR12 (filed as AR13b), AR13 (filed as AR1), AR14 (filed as AR2), AR18 (filed as AR7), AR19 (filed as AR8), AR23 (filed as AR12) do not meet the requirements of Article 123(2) EPC whereas requests AR4 (filed as AR3a), AR8 (filed as AR9a), AR15 (filed as AR3), AR16 (filed as AR4), AR17 (filed as AR5), AR20 (filed as AR9), AR21 (filed as AR10), AR22 (filed as AR11) and AR24 (filed as AR13) do not meet the requirements of Articles 123(2) and 123(3) EPC.

III. Decision

European patent EP 3 073 846 is revoked on the grounds of added subject-matter (Article 123(2) EPC) and broadening of scope of protection (Article 123(3) EPC).

Article 106
Decisions subject to appeal

- (1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.
- (2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.
- (3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

Rule 97
Appeal against apportionment and fixing of costs

- (1) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.
- (2) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.

Rule 98
Surrender or lapse of the patent

The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Article 107
Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 108
Time limit and form

Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within **two months** of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within **four months** of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

Further information concerning the filing of an appeal

- (a) Notice of appeal can be filed in accordance with Rule 1 and Rule 2(1) EPC, by delivery by hand, by post, or by technical means of communication. The filing has to comply with the details and conditions and, where appropriate, any special formal or technical requirements laid down by the President of the European Patent Office (R. 99(3) EPC).
- (b) The addresses of the filing offices of the European Patent Office are as follows:
 - (i) European Patent Office
D-80298 Munich
Germany
 - (ii) European Patent Office
Postbus 5818
NL-2280 HV Rijswijk (ZH)
The Netherlands
 - (iii) European Patent Office
D-10958 Berlin
Germany

- (c) The notice of appeal must contain the name and address of the appellant in accordance with the provisions of Rule 41(2)(c) EPC, an indication of the decision impugned, and a request defining the subject of the appeal. In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based (R. 99(1) and (2) EPC). The notice of appeal and any subsequent submissions stating the grounds for appeal must be signed (R. 50(3) EPC).
- (d) The fee for appeal is laid down in the Rules relating to Fees. The schedule of fees and expenses of the EPO or a reference to the current version is regularly published in the Official Journal of the European Patent Office under the heading "Guidance for the payment of fees, expenses and prices". Fee information is also published on the EPO website under www.epo.org/fees.



European Patent Office
Postbus 5818
2280 HV Rijswijk
NETHERLANDS
Tel: +31 70 340 2040



Potter Clarkson
Chapel Quarter
Mount Street
Nottingham NG1 6HQ
ROYAUME-UNI

Formalities Officer
Name: Rossi, Cinzia
Tel: +31 70 340 - 3322
or call
+31 (0)70 340 45 00

Application No. / Patent No. 14 732 735.7 - 1105 / 3 073 846 /	Ref. J691WO/EP/ DIV1Njoy	Date 13.10.2025
Proprietor Njoy, Inc.		

Provision of a copy of the minutes in accordance with Rule 124(4) EPC

The attached copy of the minutes of the oral proceedings is sent to you in accordance with Rule 124(4) EPC.



Rossi, Cinzia
Formalities Officer
Tel. No.: +31 70 340 - 3322

Branch at The Hague

Enclosure(s): Applicants not using the Mailbox can access patent literature via Espacenet
Copy of the minutes (Form 2309)

Application No.:

14 732 735.7

Patent No.:

EP-B-3 073 846

Minutes of the oral proceedings before the OPPOSITION DIVISION

The proceedings were public.

Proceedings opened on 23.09.2025 at 09:36 hours

Present as members of the opposition division:

Chairman: Creux, Sophie
1st member: Dimoula, Kerasina
2nd member: Granet, Nicolas
Minute writer: Granet, Nicolas

Present as or for the party or parties:

- For the Proprietor(s): Njoy, Inc.
Fiona Law accompanied by Peter Finnie and Amy Mead
- For the Opponent 1: Philip Morris Products S.A.
Hsu Min Chung accompanied with Mr. Sturberville

The identity of the person/s (as well as, if applicable, that of the witness or witnesses) and, where necessary, the authorisation to represent/authority to act were checked.

Essentials of the oral proceedings and relevant statements of the parties:

- 1 9h36: Oral proceedings are opened.
- 1.1 Opposition division (OD): asks the parties to confirm that they receive the e-mail concerning the contact details in case of technical issue.
- 1.2 All the parties confirmed they received the e-mail with the contact details.
- 1.3 OD: asks their parties to confirm their requests currently on file.
- 1.4 Opponent (O): confirms all the requests currently on file and requests not to admit the auxiliary requests named b).
- 1.5 Proprietor (P): confirms their requests currently on file and requests to be allowed to re-order them in response to the comments from the opposition division.

- 2 Main request
- 2.1 OD: invites the parties to discuss added-subject matter under Art.123(2) EPC. OD indicated a change of preliminary opinion and now considers the alcohol functional groups as an additional selection due to the examples supporting a more restricted interpretation.
- 2.2 O: agrees with the preliminary opinion expressed in the summons except regarding the method of measuring pH. On that point, O refers to her written submissions.
- 2.3 P: presents arguments to demonstrate that claim 1 finds basis in the application as originally filed and in particular in light with the claims as originally filed, par. 38-40, 46-47 and the examples.
- 2.4 10:07: Oral proceedings are interrupted.
- 2.5 10:23: Oral proceedings are resumed
- 2.6 OD: comes to the conclusion that claim 1 of the MR does not meet the requirements of Art.123(2) EPC.
- 2.7 OD: claims 2 and claims 7-13 would seem prima facie to add further deficiencies under Art.123(2) EPC on its own.
- 2.8 P: would like to discuss AR5b that is a replacement of AR5a.

- 3 AR5b
- 3.1 OD: invites the parties to discuss admissibility.
- 3.2 P: AR5b aims at trying to overcome the objections.

- 3.3 O: AR5b is prima facie not admissible as it still contravenes Art.123(2) EPC. AR5b could have been filed earlier since it is to overcome an objection under Art.123(3) EPC raised in OD's preliminary opinion
- 3.4 10:37: Oral proceedings are interrupted.
- 3.5 10: 48: Oral proceedings are resumed.
- 3.6 OD: decides to admit AR5b into the proceedings and is considered as immediately following MR.
- 3.7 OD: invites the parties to discuss Art.123(2) EPC.
- 3.8 O: presents her arguments. In particular, claim 1 still includes broad ranges of alcohol mixture. It still requires a number of selections to arrive at claim 1. Claims as originally filed do not have the amount of alcohol.
- 3.9 P: presents counter arguments. In particular, claim 1 finds basis in claims 3,7 and 8 as originally filed and the examples.
- 3.10 10:59: Oral proceedings are interrupted.
- 3.11 11:51: Oral proceedings are resumed.
- 3.12 OD: comes to the conclusion that claim1 of AR5b does not meet the requirements of Art.123(2) EPC.
- 3.13 12: 01: Oral proceedings are interrupted.
- 3.14 12:53: Oral proceedings are resumed.
- 4 AR14
- 4.1 P: would like to submit a new request AR14 occasioned by the comments under Art.123(2)EPC. It is a combination of AR3a and claim 3 as originally filed.
- 4.2 OD: Should AR14 be examined as AR2?
- 4.3 P: confirms that AR14 should be examined as AR2.
- 4.4 O: requests a break to study the request.
- 4.5 13:03: Oral proceedings are interrupted.
- 4.6 13:16: Oral proceedings are resumed.
- 4.7 OD: invites the parties to discuss admissibility.
- 4.8 O: requests that AR14 should not be admitted.
- 4.9 P: presents counter arguments to support admissibility of AR14.
-

- 4.10 13:44: Oral proceedings are interrupted.
- 4.11 14:10: Oral proceedings are resumed.
- 4.12 OD: decides to admit AR14 in the proceedings.
- 4.13 OD: clarifies its interpretation of the granted claims. The wording "from about 80% to about 98% of at least one solvent that includes one or more alcohol functional groups" means that the solvent has to have an alcohol functional group in its entire range of 80% to 98 %.
- 4.14 OD: In light of this interpretation, claim 1 of AR14 does not meet the requirements of Art.123(3) EPC.
- 4.15 P: requests a break to file a new request.
- 4.16 14:20: Oral proceedings are interrupted.
- 4.17 14:28: Oral proceedings are resumed.
- 4.18 P: does not wish to file further requests.
- 4.19 P: requests to maintain all the requests currently on file.
- 4.20 O: maintains their arguments regarding the non-admissibility of all the late filed requests filed on 04-09-2025.
- 4.21 O: maintains all objections raised in the written submissions.
- 4.22 P: maintains all objections raised in the written submissions.
- 4.23 14:32: Oral proceedings are interrupted.
- 4.24 14:40: Oral proceedings are resumed.
- 4.25 OD: decides to admit the requests filed on 04-09-2025.
- 4.26 OD: The order of the requests is MR,AR5b, AR14, AR2a, AR3a, AR4b, AR6, AR8a, AR9a, AR10b, AR11b, AR12a, AR13b, AR1-5, AR7-13. AR4a,AR5a,AR10a,AR11a and AR13 are thus considered withdrawn.
- 4.27 All parties confirm that there was no technical issues.
- 4.28 OD: announces that the patent is revoked pursuant Art.101(3)(b) EPC.
- 4.29 14:45: Oral proceedings are closed.

After deliberation of the opposition division,

- the chairman announced the following **decision** :

"The European patent is revoked."

The chairman **closed the oral proceedings** on 23.09.2025 at 14:45 hours.



signed:

Creux, Sophie

.....
Chairman

signed:

Granet, Nicolas

.....
Minute Writer

Enclosure(s):

AR14 clean, AR14 marked up

AUXILIARY REQUEST 14Claims

1. A composition comprising nicotine and at least one ion pairing agent comprising lactic acid, wherein the composition has a pH within a range of about pH 7 to about pH 11.8;
characterized in that:

the composition comprises from about 80% to about 98% by weight of a solvent or solvent mixture, and the solvent or solvent mixture includes at least one solvent that includes one or more alcohol functional groups, wherein the at least one solvent comprises at least one alcohol chosen from glycerol, propylene glycol, polyethylene glycol, or any combination thereof; and

vaporization and condensation of the composition produces an aerosol wherein at least 85% of the nicotine by weight with respect to the total weight of the composition is in a particulate phase of the aerosol.
2. The composition of claim 1 wherein a pH of the composition is greater than about 7.4, or is greater than about 7.6.
3. The composition of any preceding claim wherein the pH of the composition ranges from about 7.3 to about 8.
4. The composition of any preceding claim wherein a pH of the aerosol is ± 0.3 pH of the pH of the composition.
5. The composition of any preceding claim comprising from about 1.5% to about 6.0% nicotine, from about 44% to about 48% glycerol, and from about 44% to about 48% propylene glycol, by weight with respect to the total weight of the composition.
6. The composition of any preceding claim wherein the at least one ion pairing agent has a molar ratio with respect to nicotine ranging from about 1 : 2 to about 1 : 1 (ion pairing agent : nicotine).
7. The composition of any preceding claim, wherein the composition has a molar ratio of lactic acid to nicotine ranging from about 2:3 to about 7:8.
8. The composition of any preceding claim, wherein the composition has a molar ratio of lactic acid to nicotine of about 5:6.
9. The composition of any preceding claim, wherein the composition further comprises at least one agent chosen from menthol, a tobacco alkaloid compound, a non-tobacco flavor, or a combination thereof.
10. The composition of claim 9, wherein the at least one agent comprises a tobacco alkaloid compound chosen from nornicotine, myosmine, anabasine, nicotyrine, metanicotine, anatabine, nornicotyrine, or cotinine.
11. The composition of claim 9 or 10, wherein the composition comprises less than about 5% or less than about 2% by weight of the at least one agent, with respect to the total weight of the composition.

12. The composition of any of claims 9-11, wherein the at least one agent has a molar ratio with respect to nicotine ranging from about 1:200 to about 1:2 (agent: nicotine).
13. The composition of any of claims 9-12, wherein the composition comprises agents in different quantities.
14. A device (200, 300) for delivery of an aerosol, the device comprising:
a heating element; and
the composition of any preceding claim.
15. The device of claim 14, wherein the aerosol comprises particles with a mass median aerodynamic diameter between about 500 nm and about 1 μm .

AUXILIARY REQUEST 14Claims

1. A composition comprising nicotine and at least one ion pairing agent comprising lactic acid, wherein the composition has a pH within a range of about pH 7 to about pH 8;
characterized in that:

the composition comprises from about 80% to about 98% by weight of a solvent or solvent mixture, and the solvent or solvent mixture includes at least one solvent that includes one or more alcohol functional groups, wherein the at least one solvent comprises at least one alcohol chosen from glycerol, propylene glycol, polyethylene glycol, or any combination thereof; and

vaporization and condensation of the composition produces an aerosol wherein at least 85% of the nicotine by weight with respect to the total weight of the composition is in a particulate phase of the aerosol.
2. The composition of claim 1 wherein a pH of the composition is greater than about 7.4, or is greater than about 7.6.
3. The composition of any preceding claim wherein the pH of the composition ranges from about 7.3 to about 8.
4. The composition of any preceding claim wherein a pH of the aerosol is ± 0.3 pH of the pH of the composition.
5. The composition of any preceding claim comprising from about 1.5% to about 6.0% nicotine, from about 44% to about 48% glycerol, and from about 44% to about 48% propylene glycol, by weight with respect to the total weight of the composition.
6. The composition of any preceding claim wherein the at least one ion pairing agent has a molar ratio with respect to nicotine ranging from about 1 : 2 to about 1 : 1 (ion pairing agent : nicotine).
7. The composition of any preceding claim, wherein the composition has a molar ratio of lactic acid to nicotine ranging from about 2:3 to about 7:8.
8. The composition of any preceding claim, wherein the composition has a molar ratio of lactic acid to nicotine of about 5:6.
9. The composition of any preceding claim, wherein the composition further comprises at least one agent chosen from menthol, a tobacco alkaloid compound, a non-tobacco flavor, or a combination thereof.
10. The composition of claim 9, wherein the at least one agent comprises a tobacco alkaloid compound chosen from nornicotine, myosmine, anabasine, nicotyrine, metanicotine, anatabine, nornicotyrine, or cotinine.
11. The composition of claim 9 or 10, wherein the composition comprises less than about 5% or less than about 2% by weight of the at least one agent, with respect to the total weight of the composition.

12. The composition of any of claims 9-11, wherein the at least one agent has a molar ratio with respect to nicotine ranging from about 1:200 to about 1:2 (agent: nicotine).
13. The composition of any of claims 9-12, wherein the composition comprises agents in different quantities.
14. A device (200, 300) for delivery of an aerosol, the device comprising:
a heating element; and
the composition of any preceding claim.
15. The device of claim 14, wherein the aerosol comprises particles with a mass median aerodynamic diameter between about 500 nm and about 1 μm .