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**Datasheet for the decision
of 21 September 2023**

Case Number: T 0130/21 - 3.3.07

Application Number: 13768517.8

Publication Number: 2830622

IPC: A61K31/465, A23G4/18, A61K9/14,
A61K9/68, A61P25/34, A61K9/00

Language of the proceedings: EN

Title of invention:

A NICOTINE ORAL DELIVERY PRODUCT CONTAINING A POWDER ENCLOSED
IN A WATER INSOLUBLE POUCH, WHEREIN SAID POWDER COMPRISES
NICOTINE AND A CHEWING GUM COMPOSITION

Patent Proprietor:

FNYZ AB

Opponent:

Swedish Match North Europe AB

Headword:

Nicotine Oral Delivery Product / FNYZ AB

Relevant legal provisions:

EPC Art. 99(1)
EPC R. 76(2) (a), 41(2) (c), 77(1)
RPBA 2020 Art. 11

Keyword:

Admissibility of opposition - (yes)

Decisions cited:

T 2254/14, T 0870/92, T 1034/08, T 0603/15



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Case Number: T 0130/21 - 3.3.07

D E C I S I O N
of Technical Board of Appeal 3.3.07
of 21 September 2023

Appellant: Swedish Match North Europe AB
(Opponent) 118 85 Stockholm (SE)

Representative: Valea AB
Box 1098
405 23 Göteborg (SE)

Respondent: FNYZ AB
(Patent Proprietor) Landskronavägen 25B
252 32 Helsingborg (SE)

Representative: Brann AB
P.O. Box 3690
Sveavägen 63
103 59 Stockholm (SE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 22 December 2020 rejecting the opposition filed against European patent No. 2830622 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman A. Uselli
Members: E. Duval
Y. Podbielski

Summary of Facts and Submissions

- I. The appeal was filed by the opponent against the decision of the opposition division to reject the opposition as inadmissible on the basis of Rule 77(2) EPC.
- II. According to the appealed decision, it could not be unambiguously determined whether the opponent was "Swedish Match North Europe AB", or "Swedish Match AB" which was a separate company. The opponent was identified as "Swedish Match North Europe AB" on EPO form 2300, and as "Swedish Match" in the accompanying submissions setting out the facts and arguments in support of the opposition ("opposition brief"), which could reasonably be understood as a reference to "Swedish Match AB". Accordingly, the identity of the opponent under Article 99(1) EPC together with Rule 76(2) EPC could not be sufficiently established on the basis of the documents and information filed within the opposition period, such that the opposition as filed was not admissible. A request for correction of the opponent's identity under Rule 139 EPC was refused on the ground that it was not filed without delay.
- III. The following documents are relevant for the present decision:
- D12: Certificate of registration from the Swedish Companies Registration Office for the legal entity "Swedish Match North Europe AB"
- D13: Certificate of registration from the Swedish Companies Registration Office for the legal entity "Swedish Match AB"

D20: printout of the search results for "Swedish Match" on the Swedish company registration search page

D21: Screenshots of the webpage <https://www.swedishmatch.com/> of 11 July 2023

D22: Screenshots of the webpage <https://www.swedishmatch.com/> of 5 May 2019

D23: Screenshots of the webpage <https://www.swedishmatch.com/> of 5 September 2020

D24: printout of the EUIPO EUTM file information for the trademark Swedish Match 018248142

- IV. The Board set out its preliminary view in a communication under Article 15(1) RPBA.
- V. Oral proceedings were held before the Board by way of a videoconference.
- VI. The parties' requests at the end of the oral proceedings were the following:
- (a) The appellant (opponent) requests that the decision under appeal be set aside, that the opposition in its filed form be deemed admissible, and that the case be remitted to the opposition division for further prosecution.

As its first auxiliary request the appellant requests that the wording "Swedish Match" in the opposition brief annexed to EPO Form 2300 be corrected under Rule 139, first sentence, EPC to read "Swedish Match North Europe AB", that the opposition in this corrected form be deemed admissible and that the case be remitted to the opposition division for further prosecution.

(b) The respondent (patent proprietor) requests that the appeal be dismissed.

VII. The appellant's argument can be summarised as follows:

The documents constituting the notice of opposition identified only one existing legal person as opponent, namely "Swedish Match North Europe AB". There was nothing to suggest, in the documents making up the notice of appeal, that the reference to "Swedish Match" in the opposition brief was anything other than a permissible abbreviation of "Swedish Match North Europe AB" identified in EPO form 2300, and nothing to suggest that "Swedish Match AB" could have been meant. Accordingly, the opposition as filed was admissible.

VIII. The respondent's argument can be summarised as follows:

The naming of "Swedish Match North Europe AB" in EPO Form 2300 was not the only identification of an opponent that fulfilled the requirements of the EPC. The identification of "Swedish Match" in the opposition brief could not be considered as a reasonable abbreviation of "Swedish Match North Europe AB". Since this second identification was the only indication of an opponent including the street and house number, a third party reading the documents making up the notice of opposition would have concluded that "Swedish Match" referred to the second company "Swedish Match AB", despite the lack of "AB". Furthermore, the appellant's auxiliary request to correct the name of the opponent amounted to admitting that "Swedish Match" was a mistake rather than an abbreviation, and thus contradicted the main request.

A third party would not be limited to the information given in the notice of opposition when trying to construe who the opponent was, and would consider all available information to ascertain the meaning of "Swedish Match" by e.g. making web searches and searches in registers. The third party would conclude that "Swedish match" referred to "Swedish Match AB", and thus would not be able to unambiguously determine the identity of the opponent from the notice of opposition.

Reasons for the Decision

1. Main request, admissibility of the opposition
 - 1.1 Under Article 99(1) EPC, within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the EPO of opposition to that patent, in accordance with the Implementing Regulations. Among other conditions, Rule 76(2)(a) EPC requires that the notice of opposition contain particulars of the opponent as provided in Rule 41(2)(c) EPC, including their name and address. It is established case law that, for an opposition to be admissible, the opponent has to be identifiable by expiry of the opposition period (see the Case Law of the Boards of Appeal, 10th edition, 2022, IV.C.2.2.4.d)). If the opposition does not identify the opponent before expiry of the opposition period, the opposition is rejected as inadmissible under Rule 77(1)EPC.
 - 1.2 The notice of opposition was filed with EPO form 2300 and an opposition brief.

1.2.1 EPO form 2300 indicates as opponent:

Swedish Match North Europe AB
SE-118 85 Stockholm
Sweden

EPO form 2300 thus contains the full designation of an existing company, namely "Swedish Match North Europe AB", as shown in the certificate of registration D12. The address given in EPO form 2300, which lacks a house number, is identical to the registered address (see D12), and does not infringe Rule 76(2)(a) EPC in combination with Rule 41(2)(c) EPC ("including the house number, if any").

Accordingly, the company "Swedish Match North Europe AB" is unambiguously identified as opponent in EPO form 2300.

1.2.2 The accompanying opposition brief indicates as opponent:

Swedish Match
Sveavägen 44
118 85 Stockholm
Sweden

The respondent considers that the indication "Swedish Match" in the opposition brief must refer to "Swedish Match AB", a separate legal entity. This contradiction would entail that the opponent is not sufficiently identifiable, such that the opposition is not admissible.

The Board does not agree. There is no mention of the separate company "Swedish Match AB" (see D13) in either EPO form 2300 or the accompanying brief. The opposition brief only mentions "Swedish Match", which is not the full business name of an existing company. As an abbreviation, "Swedish Match" may refer to numerous different companies (as shown by a search for "Swedish Match" in the Swedish companies register, see D20) including, among others, not only "Swedish Match AB" but also "Swedish Match North Europe AB". The documents filed as the notice of opposition do not contain any information which could lead a third party to conclude that "Swedish Match" refers to "Swedish Match AB".

Thus, the use, in the opposition brief, of the global company name "Swedish Match" without precision as to the legal entity meant does not contradict the unambiguous information provided in EPO form 2300. Together, the documents filed as the notice of opposition clearly designate the legal entity "Swedish Match North Europe AB" as opponent.

The additional address line "Sveavägen 44" in the opposition brief only completes the information in EPO form 2300 and could be regarded as the visiting address for "Swedish Match North Europe AB". In any case, it does not contradict the identification of the opponent in EPO form 2300 which does not indicate any street or number.

- 1.2.3 It is established case law that the failure to use the exact official designation of a legal entity, or the use of an abbreviation instead of its full name, do not render an opposition inadmissible as long as the party's identity can be established (see the Case Law of the Boards of Appeal, 10th edition, 2022, IV.C.

2.2.4(b), in particular decisions T 870/92 and T 1034/08 cited by the respondent). The respondent also relied on T 603/15, wherein both "Arkema" and "Arkema France" were indicated in the notice of opposition, and emphasized that the official designation of Arkema was actually Arkema S.A.. However, none of these decisions can lead to the conclusion that the status of the legal person, i.e. the indication "AB", must be the only missing part in the expression "Swedish Match". On the contrary, they confirm that the incorrect designation "Swedish Match" does not render an opposition inadmissible as long as the party's identity can be established. Considering the unambiguous information in EPO form 2300, the Board considers that this is the case here. The Board stresses that the question is not whether the sole mention of "Swedish Match" would sufficiently identify a legal entity, be it "Swedish Match AB" or otherwise. Instead, the relevant question is whether the notice of opposition at hand, containing not only the unspecific "Swedish Match" but also the clear indication of "Swedish Match North Europe AB", clearly identifies the opponent.

- 1.2.4 The respondent, citing T 2254/14, expressed the view that a third party would not be constrained to the framework of the notice of opposition and would seek to ascertain the meaning of "Swedish Match" by e.g. making web searches and searches in registers (see D20-D24). However, the opponent's identity must be established by the documents filed as the notice of opposition in the first place. A third party would resort to searches for further information only to the extent that these initially filed documents leave the identity of the opponent unclear. This search for further information cannot serve the purpose of finding a lack of clarity where there is none.

Furthermore, the analogy drawn by the respondent with T 2254/14 is not convincing. In T 2254/14, the Board firstly concluded that the indication of the tradename "Danone Research - Centre for Specialised Nutrition" in EPO form 2300 allowed the company "Danone Research B.V." to be sufficiently identifiable, whereas, in the attached statement of grounds, a different legal person, namely "N.V. Nutricia", was identifiable. In contrast, in the present case, the documents filed as the notice of opposition do not contain any irreconcilable contradiction and do not justify that "Swedish Match" be seen as a tradename which must be associated with "Swedish Match AB".

There is therefore no reason to assume that "Swedish Match" refers to anything else than the company "Swedish Match North Europe AB" mentioned in EPO form 2300. The respondent's further arguments based on the number of words to be added to go from "Swedish Match" to "Swedish Match AB" as opposed to "Swedish Match North Europe AB" are likewise not convincing.

- 1.3 Lastly, according to the respondent, the appellant's first auxiliary request (namely a correction under Rule 139 EPC) amounts to an admission that "Swedish Match" is a mistake rather than an abbreviation, and would thus contradict the main request. The Board does not share this view. The appellant may file an auxiliary request for correction of "Swedish Match" for the case where the Board would have found this indication to contradict EPO form 2300. This does not preclude the opponent to defend the view that there is no such contradiction in the first place, and thus does not contradict the corresponding main request.

- 1.4 In conclusion, EPO form 2300 correctly identifies the opponent, and is not contradicted by the opposition brief. Together, form 2300 and the opposition brief unambiguously identify the opponent as "Swedish Match North Europe AB".

Accordingly, the opposition in its filed form is admissible.

2. Remittal

The opposition division rejected the opposition division as inadmissible, and consequently did not examine the opposition in substance. These circumstances constitute special reasons justifying that the case be remitted to the opposition division under Article 11 RPBA.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



B. Atienza Vivancos

A. Uselli

Decision electronically authenticated