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**Datasheet for the decision
of 2 March 2009**

Case Number: T 1688/06 - 3.4.03

Application Number: 02018326.5

Publication Number: 1262833

IPC: G03F 7/20

Language of the proceedings: EN

Title of invention:

Lithography information control system

Applicant:

NIKON CORPORATION

Opponent:

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Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 76(1)

Keyword:

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Decisions cited:

G 0001/06

Catchword:

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Case Number: T 1688/06 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 2 March 2009

Appellant:

NIKON CORPORATION
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Tokyo (JP)

Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 26 May 2006
refusing European application No. 02018326.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. Eliasson
Members: V. L. P. Frank
J. Van Moer

Summary of Facts and Submissions

- I. This is an appeal from the refusal of application 02 018 326 for containing subject-matter extending beyond the content of the earlier application as filed (Article 76(1) EPC 1973).
- II. The present application (A3) is a divisional application from application 98 111 430 (A2) which is in turn a divisional application from application 92 302 922 (A1).
- III. The appellant applicant submitted amended claims 1 to 8 with letter of 23 October 2008 in response to a communication of the board which addressed *inter alia* the objection of the examining division.
- IV. The appellant applicant requests that the decision under appeal be set aside and the case remitted to the examining division for further prosecution.
- V. Independent claim 1 reads now as follows (the differences with respect to the version refused by the examining division have been marked by the board):

"A setting apparatus for setting a measuring condition of measuring means (140, 150) for measuring a process precision of a substrate processed in **a lithographic process** in an exposure apparatus, characterized in that the setting apparatus ~~further~~ comprises:
control means for setting the measuring condition of measuring means based on exposure process information, including at least information

indicating **the product and process step** ~~a grade of the substrate~~, of the exposure apparatus when processing the substrate."

Claim 7 is directed to "an exposure apparatus for exposing a substrate in a lithographic process comprising ... setting apparatus for setting a measuring condition of measuring means according to any of claims 1 to 6".

- VI. The examining division found that the application did not meet the requirements of Article 76(1) EPC 1973, because claim 1 contained the feature "*information indicating a grade of a substrate*". This feature was not contained in the parent application, since the parent application disclosed that the information was *for the wafer grade*. "*Indicating*" however was a more specific term which implied that information was not only somehow related to the wafer grade but directly specified the wafer grade.

Reasons for the Decision

1. The appeal is admissible.
2. The examining division found in the decision under appeal that the expression used in claim 1 "*information indicating a grade of a substrate*" had not been disclosed in the parent application (A2).
3. Amended claim 1 now states the feature "*information indicating the product and process step*". This feature is disclosed in the application as originally filed

(A3), as well as in the parent (A2) and grandparent (A1) applications (A3, column 6, lines 42 to 51; A2, column 6, lines 39 to 48; A1, column 6, lines 42 to 52).

Claim 7 has been amended correspondingly.

4. The relevant part of the description of all three applications A1 to A3 is identical and reads:

"Therefore, the MDP 110 can identify the exposure unit in which said wafer lot is processed, and can set the measurement conditions. It is assumed that the measurement devices 140, 150 shown in Fig. 2 are used for the measurement, and the MDP 110 prepares and stores a measurement process program relating to the contents of measurement, control data on the measurement devices, criteria for judgment of the results of measurement etc. for each product (or wafer grade) and each process step."

5. Briefly, the master data processor (MDP) prepares and stores a measurement process program ... for each product and each process step. It follows that the measuring condition of the measuring means is set according to exposure process information including information on the final product (ie the device being manufactured) and the particular process step to which the product is being currently subjected. The board considers that a measurement process program *for* each product and each process step also *indicates* the product and process step being measured.

6. Since the amended feature is thus disclosed in all the applications A1 to A3 forming a sequence of divisionals, the criteria set out in G 1/06 for complying with Article 76(1), second sentence EPC 1973 are met (G 1/06, OJ 2008, 307, Order)

The board is, therefore, satisfied that the requirements of Article 76(1) EPC 1973 are fulfilled.

7. As the examination of the further requirements of the EPC has not yet been carried out, remittal of the case for further prosecution pursuant to Article 111(1) EPC is appropriate.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

Registrar

Chair

S. Sánchez Chiquero

G. Eliasson