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**Datasheet for the decision
of 25 August 2025**

Case Number: T 1915/23 - 3.2.07

Application Number: 16705525.0

Publication Number: 3356051

IPC: B04B13/00, B04B11/04,
B04B11/02, G01N21/84

Language of the proceedings: EN

Title of invention:

APPARATUS AND METHOD FOR MONITORING AND CONTROLLING A
CENTRIFUGAL

Patent Proprietor:

Bjarne Christian Nielsen Holding ApS

Opponent:

Ferrum Process Systems AG / J.M. Canty Inc.

Headword:

Relevant legal provisions:

EPC Art. 54, 56, 100(a)
RPBA Art. 11, 12(2), 13(2)

Keyword:

Novelty - main request (yes)

Inventive step - main request (no)

Late-filed evidence - justification for late filing (no)

Remittal to the opposition division

Decisions cited:

G 0002/21

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1915/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 25 August 2025

Appellant: Ferrum Process Systems AG / J.M. Canty Inc.
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Respondent: Bjarne Christian Nielsen Holding ApS
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 September
2023 rejecting the opposition filed against
European patent No. 3356051 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman G. Patton
Members: S. Watson
Y. Podbielski

Summary of Facts and Submissions

- I. An appeal was filed by joint opponents (referred to hereinafter as "the opponent") against the decision of the opposition division to reject the opposition against European patent No. 3 356 051.

The joint opposition was based on the grounds for opposition under Article 100(a) EPC, lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC).

- II. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 10 April 2025, according to which the appeal was likely to be successful, at least in part.

- III. The patent proprietor responded to this communication with submissions of 25 June 2025, including new evidence (filed on 30 June 2025) and a new auxiliary request. The opponent responded to the patent proprietor's submissions with its own submissions of 25 July 2025. Both parties filed further submissions prior to the oral proceedings before the board, the patent proprietor on 21 August 2025 and the opponent on 22 August 2025.

- IV. Oral proceedings before the board took place on 25 August 2025.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

V. The final requests of the parties are as follows.

The opponent ("appellant") requested that

- the decision under appeal be set aside and
- the patent be revoked.

The patent proprietor ("respondent") requested that

- the appeal be dismissed, *i.e.* the patent be maintained as granted (main request)
- or, if the decision under appeal is set aside,
- that the case be remitted to the opposition division for further prosecution, or
 - that the patent be maintained in amended form on the basis of one of the sets of claims of auxiliary requests 1A, 1, 2 or 3, whereby auxiliary request 1A was filed with submissions of 25 June 2025 and auxiliary requests 1 to 3 were filed with the respondent's reply to the appeal.

VI. The following documents are referred to in this decision:

- D5d: Datasheet "Centrifuge camera control" TA9618-1 Rev. 1. Available at: <https://web.archive.org/web/20061102022231/http://www.jmcanty.com/overview/V.Vector/A9618.pdf> from 02.11.2006
- E1: ICUMSA "Method GS2/3-9 (2005) The determination of sugar solution colour at pH 7.0 - accepted"
- E2: ICUMSA "Method GS1/3-7 (2011) Determination of the solution colour of raw sugars, brown sugars and coloured syrups at pH 7.0 - official"
- E3: ICUMSA "Method GS2/3-10 (2011) The

determination of white sugar solution colour
- official"

E4: ICUMSA "Method GS9/1/2/3-8 (2011) The
determination of sugar solution colour at
pH 7.0 by the MOPS buffer method - official
(reference) method".

VII. Claim 1 of the main request reads as follows (feature
labelling as used in the decision under appeal):

- A** A centrifugal assembly comprising
- A1** a centrifugal (300) and
- A2** an integrated apparatus (104, 200, 306) for
monitoring separation of solid and liquid phases
in a centrifugal by measuring at least one
parameter of a filling material inside a
centrifugal,
- A2.1** the integrated apparatus, which is positioned
outside the centrifugal basket (100, 301) of the
centrifugal, comprising
- A2.2** - at least one broadband light source (202) for
illuminating at least part of a surface of the
filling material, and
- A2.3** - a light detector arrangement (203) comprising a
plurality of light detectors (208-210) being a
adapted to receive light reflected from the
filling material.

VIII. Claim 8 of the main request reads as follows (feature
labelling as used in the decision under appeal):

- B** A method for monitoring and controlling
separation of solid and liquid phases in a
centrifugal (300) by measuring at least one
parameter of a filling material inside a
centrifugal basket (100, 301), the method

comprising the steps of

- B1** - illuminating at least part of a surface (108) of the filling material with at least one broadband light source (202) forming part of an integrated apparatus (104, 200, 306), which is positioned outside a centrifugal basket (100, 301) of the centrifugal,
- B2** - receiving light reflected from the filling material by applying a light detector arrangement (203) comprising a plurality of light detectors (208-210), the light detector arrangement forming part of the integrated apparatus (104, 200, 306),
- B3** - processing signals from the light detector arrangement (203), and
- B4** - generating at least one control signal in response to the processed signals from the light detector arrangement (203), and apply said at least one control signal to control the centrifugal (300) and thereby control the separation of solid and liquid phases.

IX. In view of the decision taken, it is not necessary to reproduce the wording of the auxiliary requests here.

X. The arguments of the parties relevant for the decision are dealt with in detail below in the reasons for the decision.

Reasons for the Decision

1. *Main request - claims 1 and 8 - novelty - Articles 100(a) and 54 EPC*

1.1 The opposition division found that the subject-matter of claims 1 and 8 of the patent as granted was novel with respect to document D5d as this document did not directly and unambiguously disclose that a broadband light source was used (features A2.2 and B1, in part). The opposition division reasoned that the light source disclosed in D5d could be either broadband or monochromatic (see the decision under appeal, II.10.2.4 and 10.9 with 10.1.3 and II.9.3).

1.2 The appellant contested this finding and argued that although there was no explicit disclosure of a broadband light source, the skilled person, using their common general knowledge would inevitably understand the term "light" used in D5d as referring to a broadband light source, as no additional, specific information is given regarding the type of light.

1.3 The respondent requested that document D5d not be admitted into the appeal proceedings as it was late-filed and could not be unambiguously identified.

Further, the respondent contested the appellant's understanding of the skilled person's interpretation of "light" and filed documents E1 to E4 to demonstrate that the skilled person would understand light in the context of D5d as a monochromatic, not broadband, source.

1.4 The appellant requested that documents E1 to E4 not be admitted into the appeal proceedings as they were filed

after the notification of the communication of the board pursuant to Article 15(1) RPBA and no exceptional circumstances were present.

1.5 *Admittance of document D5d*

- 1.5.1 The board notes that a link to document D5d was filed by the appellant with its submissions of 5 June 2023, therefore after the time limit set out in Rule 116(2) EPC.

The opposition division then used its discretion and admitted the document found under the link into the opposition proceedings because the document was deemed *prima facie* highly relevant for novelty for claim 1 of the patent as granted (see the decision under appeal, II.5.3).

The decision under appeal then fully considered D5d for both novelty and inventive step (see the decision under appeal, II.10.2 and II.11.2).

- 1.6 This board follows the line of case law that there is no legal basis to exclude D5d from the appeal proceedings as it was admitted by the opposition division and the decision was based on it (Case Law of the Boards of Appeal, 11th edition 2025 (CLB), V.A.3.4.3).

- 1.6.1 In addition, it is established case law that a board should not review all the facts and circumstances of the case as if it were the opposition division and decide whether it would have exercised its discretion in the same way, but rather should only overrule a discretionary decision if the opposition division exercised its discretion in accordance with the wrong

principles, without taking the right principles into account or in an arbitrary or unreasonable manner (CLB, V.A.3.4.1b)).

In the present case, the opposition division considered the criterion of *prima facie* relevance which is recognised as being a decisive criterion (see CLB, IV.C.4.5.3).

- 1.6.2 The board cannot see any legal basis for not admitting a document which forms part of the decision under appeal, and is also of the view that the opposition division exercised its discretion according to the correct principles and not in an arbitrary manner.

Document D5d therefore forms part of the appeal proceedings.

1.7 *Admittance of documents E1 to E4 (Article 13(2) RPBA)*

- 1.7.1 According to Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified by cogent reasons by the party concerned.

- 1.7.2 Documents E1 to E4 are new evidence filed for the first time in the appeal proceedings, so clearly represent an amendment to the respondent's appeal case. They were filed after the notification of the communication under Article 15(1) RPBA so Article 13(2) RPBA applies.

The respondent argued that the documents were filed in reaction to the surprising preliminary opinion of the board that "light" and "light source" are generally to

be interpreted as broadband light. According to the respondent, as this interpretation contradicted the rules and standards outlined by the International Commission for uniform methods of sugar analysis ("ICUMSA"), exceptional circumstances existed (see respondent's submissions of 25 June 2025, points 5.4 to 5.5).

- 1.7.3 The board does not agree that any exceptional circumstances are present.

As the appellant argued, the issue regarding the interpretation of the term "light" formed part of the opposition proceedings (see appellant's submissions of 25 July 2025, point 3.1).

The board's preliminary opinion regarding the interpretation of "light" and "light source" was based wholly on the appellant's arguments which were already present in the appeal proceedings (statement of grounds of appeal, point 3.2) and were considered in the decision under appeal (see points II.10.2.4 with II.10.1.3).

The board's preliminary opinion did not therefore raise any new issues which would justify the filing of new evidence.

Documents E1 to E4 are therefore not considered in the appeal proceedings.

- 1.8 *Features A2.2 and B1 - "broadband light source"*

- 1.8.1 The main point of discussion regarding the novelty of the subject-matter of claims 1 and 8 was whether document D5d, in any of the three embodiments shown,

implicitly disclosed that the light source in the "Canty Camera/Light combination" was a broadband light source.

1.8.2 The appellant argued that the skilled person would interpret "light" as a broadband light source. This was because in the absence of any further specification, such as "laser" or "monochromatic", the skilled person would always understand "light" as a broadband light source. This implicit understanding was confirmed in a number of places in D5d, for example, the video output might be in colour; the first embodiment in D5d referred to continuous internal viewing from the control room; and the second embodiment referred to viewing and controlling the colour line. These disclosures in D5d all led the skilled person to understand that the light referred to in this document must be a broadband light source.

1.8.3 The board however agrees with the opposition division's finding that there is no direct and unambiguous disclosure of a broadband light source in document D5d.

It is established case law that implicit features may be taken into account when assessing novelty, but it must be the case that nothing other than the implicit feature is conceivable for the skilled person, *i.e.* the implicit feature must be the inevitable consequence of the explicit disclosure, not merely be made obvious by it (see CLB, I.C.4.3).

1.8.4 The appellant did not convincingly demonstrate that the skilled person using their common general knowledge could only interpret "light" as referring to a broadband light source.

As reasoned in the decision under appeal, the skilled person could also understand "light" as a generic term encompassing both broadband and monochromatic light sources (see decision under appeal, point II.9.3).

D5d is silent regarding the specific type of light source used and the further indicators in D5d referred to by the appellant do not inevitably require a broadband light source.

2. *Main request - claim 1 - inventive step - Articles 100(a) and 56 EPC*

2.1 The opposition division found that the subject-matter of claim 1 was inventive with respect to document D5d alone (decision under appeal, point II.11.2).

2.2 In the decision under appeal, feature A2.2 was taken as the single distinguishing feature and the objective technical problem used was "to obtain more parameter or more detailed information about the state of the filling material inside of the centrifuge" as broadband light enabled a spectral analysis of the light from the filling material (see decision under appeal, point II.11.2.2).

The opposition division reasoned that there were "multiple technical options to obtain more parameter or more detailed information" and that D5d contained no pointer to the use of broadband light as in feature A2.2.

2.3 The appellant argued that the claimed features alone did not solve the problem posed by the opposition division and that as D5d (specifically the basket/peeler style embodiment) already disclosed a light

source, the objective technical problem had to be formulated as to choose the light source.

The skilled person had only two options of light source types, either monochromatic or broadband light sources. The skilled person would select the broadband light source as it was the most common and generally available light source and was the usual choice for use with any camera. In particular, as D5d disclosed a colour video output (D5d, page 2) and as the camera/light combination in D5d allowed continuous internal viewing from the control room (D5d, page 1, first paragraph), it would be obvious for the skilled person to use a broadband light source for ease of viewing.

- 2.4 The respondent on the other hand raised two lines of argument regarding the objective technical problem to be solved, and argued in any case that the skilled person would use a monochromatic light source based on their common general knowledge.
- 2.4.1 In a first line of argument (see reply to the appeal, points 7.5 to 7.7) the respondent argued, in a similar manner to the opposition division, that the technical effect of the distinguishing feature was that spectral investigations may be performed. The objective technical problem to be solved should then be regarded as to provide more information about the filling material, and should not be seen as selecting between two types of light source. Document D5d did not address spectral investigations at all and provided no hint or prompt to provide at least one broadband light source.
- 2.4.2 Regarding the first line of argument, the board agrees with the arguments of the appellant that the technical teaching in the contested patent requires the use of an

optical band-pass filter in front of each light detector in order to perform a spectral analysis (contested patent, paragraphs [0012] and [0028]). In the absence of any such filters in the claim, the use of a broadband light source alone does not allow spectral investigations to be carried out so that the objective technical problem is not solved by the claimed subject-matter.

- 2.4.3 At oral proceedings before the board, the respondent reiterated a second line of argument, made in its submissions of 25 June 2025. In this second line of argument, the appellant considered that the objective technical problem to be solved should be regarded as to provide a centrifugal assembly and an associated method preventing that information relating to colour and distance is mixed in an undesired manner (see submissions of 25 June 2025, points 7.5 to 7.8).
- 2.4.4 Regarding this second line of argument, the board notes that according to G 2/21, a patent proprietor may rely on a technical effect for inventive step if the skilled person, having the common general knowledge in mind, and based on the application as originally filed, would derive said effect as being encompassed by the technical teaching and embodied by the same originally disclosed invention.

At the oral proceedings before the board the respondent noted that there was no mention of this technical effect in the patent application as filed. The respondent agreed at the oral proceedings before the board that this technical effect and associated objective technical problem were not found in the contested patent. The respondent gave no further reasons why the skilled person would understand that

the effect was embodied by the originally disclosed invention.

The board therefore is of the view that this objective technical problem cannot be relied on.

- 2.5 As the camera/light combination of D5d already discloses a light source, the skilled person, when putting D5d into practice, must therefore select a suitable light source (see CLB, I.D.9.21.11).

As the appellant argues, broadband light sources are generally available and are suitable for use with colour camera systems as in D5d. Therefore the skilled person would choose such a light source, irrespective of whether it additionally would allow spectral investigations to be performed.

- 2.5.1 The respondent argued at the oral proceedings before the board, that the skilled person was not faced with two equal alternatives (broadband or monochromatic light) but rather they would use a monochromatic source due to their common general knowledge. According to the respondent, in sugar production it was usual to use monochromatic light and in addition the skilled person was aware that a monochromatic light gave the best control due to less noise than when many wavelengths of light were used. The appellant contested both points.

The board notes that D5d makes no reference to sugar production and cannot be considered to be limited to only that usage. The board is further of the view that even if the contested common general knowledge relating to alleged noise from a broadband source is taken into account, the skilled person is still faced with two

obvious alternatives with known advantages and disadvantages for use in D5d.

As the appellant argued, the indication in D5d (basket/peeler style) that there is continuous internal viewing of the centrifuge from the control room, together with the option of a colour video output would suggest to the skilled person that a broadband light source should be used in D5d. Even if this might lead to more noise for the control system, it would still be obvious for the skilled person to use a broadband light source for ease of use of the operator.

Therefore, contrary to the arguments of the respondent, the skilled person, starting from document D5d has no reason to favour the use of a monochromatic light.

2.6 The appellant has therefore convincingly demonstrated that the opposition division was incorrect in finding that the subject-matter of claim 1 was inventive in view of document D5d.

3. *Main request - claim 8 - inventive step - Articles 100(a) and 56 EPC*

3.1 In the decision under appeal (see II.11.2.6) and in the parties' written submissions, the same arguments were used and relied upon for inventive step of the subject-matter of claim 8 as for the subject-matter of claim 1 (see statement of grounds of appeal, 3.4.1 and reply to the appeal, 7.9). Feature B1 was seen as the distinguishing feature, corresponding to feature A2.2 of claim 1.

3.2 At the oral proceedings before the board, the respondent argued that as feature B2 required a

plurality of light detectors and feature B4 referred to generating control signals in response to processed signals from the light detector arrangement, the skilled person would choose a monochromatic light source for the method of D5d as the control system was of more importance than any requirement for viewing by an operator.

- 3.3 The board agrees with the appellant that as features B2 and B4 are disclosed in the basket/peeler style centrifuge of document D5d (which was not disputed by the respondent, see also reply to the appeal, points 6.12 to 6.15 and 6.45), the same considerations regarding inventive step apply as for the subject-matter of claim 1.
4. As the board concludes that the subject-matter of both claims 1 and 8 of the main request lacks inventive step in view of document D5d, the decision under appeal is to be set aside.
5. *Remittal - Article 11 RPBA*
 - 5.1 In its written submissions, the respondent requested remittal of the case to the opposition division for further prosecution should the decision under appeal be set aside. The appellant expressed agreement with this request at the oral proceedings before the board.
 - 5.2 According to Article 11 RPBA, a board should only remit a case if special reasons present themselves for doing so.
 - 5.3 Although the EPC does not guarantee parties an absolute right to have all issues considered at two instances,

the primary object of the appeal proceedings is to review the decision under appeal (Article 12(2) RPBA).

If the board were to continue the present opposition proceedings by considering the admittance and allowability of the current auxiliary requests (some of which were filed with written submissions in the opposition proceedings), it would be put in the position of taking decisions on procedural and patentability issues which were not considered at all by the opposition division.

- 5.4 The board is therefore of the view that special reasons within the meaning of Article 11 RPBA are present and the case should be remitted to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated