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**D E C I S I O N**  
**of 10 January 2000**

**Case Number:** T 0945/95 - 3.3.6

**Application Number:** 89121226.8

**Publication Number:** 0427887

**IPC:** D21H 23/22

**Language of the proceedings:** EN

**Title of invention:**

A coater apparatus

**Patentee:**

Beloit Technologies, Inc.

**Opponent:**

Valmet Corporation

**Headword:**

Coater/BELOIT

**Relevant legal provisions:**

EPC Art. 114, 54, 55, 56, 113(1)  
EPC R. 67

**Keyword:**

"Withdrawal of oppositions - restricted obligation for  
investigation of the Boards of Appeal concerning an alleged  
prior use"

"Public prior use - unestablished"

"Novelty - yes"

"Inventive step - yes"

**Decisions cited:**

T 0129/88

**Catchword:**

-



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Boards of Appeal

Chambres de recours

**Case Number:** T 0945/95 - 3.3.6

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.6**  
**of 10 January 2000**

**Appellant:** Beloit Technologies, Inc.  
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**Representative:** Haug, Dietmar, Dipl.-Ing.  
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**Respondent:** Valmet Corporation  
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**Representative:** Grams, Klaus Dieter, Dipl.-Ing.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 9 November 1995  
revoking European patent No. 0 427 887 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** P. Krasa  
**Members:** G. Dischinger-Höppler  
P. Mühlens



## Summary of Facts and Submissions

I. European Patent No. 0 427 887, relating to a coater apparatus, was granted on the basis of 11 claims, the only independent apparatus claim reading:

"1. An on-line coater apparatus for coating a web of paper, said apparatus comprising:

a dryer section;

said dryer section including:

a plurality of single-tier dryer groups (14-19), each successive group drying an alternate side of the web, the web being restrained against cross-machine directional shrinkage during passage through said plurality of dryer groups;

a further single-tier dryer group (20) disposed downstream relative to said plurality of groups such that the web extends in an open draw (22) between said plurality of groups and said further group;

tail cutter means (24) disposed adjacent to said open draw (22) for cutting a tail from the web for subsequent threading through said further group (20);

calender means (26) disposed downstream relative to said further group for calendering the dried web;

a coater (28) disposed downstream relative to said calender means (26) for coating one side (30) of the web;

a single-tier coating dryer group (32) disposed downstream relative to said coater for drying said coated one side of the web; and

winding means (34) disposed downstream relative to said coating dryer group for winding the coated web."

A second independent claim (Claim 11) relates to an on-

line method for coating a web of paper by using in successive steps the individual parts of an apparatus as defined in Claim 1.

II. Two oppositions were filed against the patent in suit in its entirety on the grounds of Article 100(a) EPC.

Opponent I opposed the patent under Articles 54 and 56 EPC and based his reasoning on the following documents:

(1) WO-A-88/04206,

(2) US-A-4 728 396,

(11) US-A-1 402451 and also on

a variety of technical drawings and letters designated documents (3) to (10) which were alleged to constitute a prior public use.

Opponent II (Respondent) raised objections under Article 56 EPC and cited the following further documents:

(12) FR-A-1 370 915 (corresponding to document (18)),

(13) US-A-3 723 169,

(14) WO-A-88/06205,

(15) Brochure of Valmet: Kaipola PM6 LWC, dated 88,

(16) Brochure of Valmet: Valmet Rebuilds, dated 6.86,

(17) US-A-2 257 373,

(18) US-A-3 288 632 and

(19) "Das Papier", vol. 43, Heft 10A, October 1989.

III. The Proprietor (Appellant) contested the arguments provided by the opponents, filed an amended set of claims as an auxiliary request and submitted the following documents

(20) "Exhibit 10 [A]": facsimile of 20 July 88, sent by Beloit to Villarmet,

(21) "Page 42 [B]": Affidavit Baldini,

(22) "B84304 [C]": drawing B 84304, dated 1 July 88,

(23) "Exhibit 9 [D]": drawing Villarmet (document (3) cited by Opponent I),

(24) "B84305 [E]": drawing B 84305 and

(25) "Exhibit [F]": drawing Beloit LF6-024910-7, dated 8 September 88

in an attempt to refute the prior use argument of Opponent I. He further refuted the arguments of Opponent II as being based on irrelevant prior art documents.

In an annex to summons to oral proceedings, the Opposition Division informed the parties that one issue of the proceedings was to establish whether

documents (3) to (10), (22), (24) and (25) formed part of the prior art. Opponent I then withdrew his opposition prior to oral proceedings before the Opposition Division without giving any further substantial comments.

IV. The Opposition Division revoked the patent on the ground of lack of novelty over document (25). They held that the imprint in the right hand bottom corner of document (25) reading "Questa copia è di proprietà della Beloit Italia ed è riservata ..." did not prove any confidentiality obligation, the more so as it was considered to be evident from document (23) that at least part of the information contained in document (25) originated from Mr Villarmet, an employee of Papeterie Corbehem (Corbehem), and not from the Proprietor's inventor Mr Baldini. They held that this imprint even contained the instruction that document (25) was to be used at least by some personnel in charge of the maintenance and supply or delivery of the machine. Moreover, the Opposition Division took the view that the Proprietor had admitted in his response to the oppositions dated 18 October 1994 and during the oral proceedings that Corbehem communicated the developments of the claimed subject-matter contained in document (25) to Voith GmbH (Voith) in breach of any possibly existing confidentiality obligation, whereby said subject-matter became state of the art.

V. With his Appeal brief setting out the grounds of appeal, the Appellant filed written statements from

**Mr Giorgio Baldini**, inventor of the patent in suit and employee of Beloit Italia SpA (Beloit);



**Mr Jean-Paul Delaroche**, joint general manager at  
Papeterie Beghin Corbehem; and

**Mr Victor Grittum**, employee of a paper mill in the  
United States

to show that the terms of confidentiality which normally govern the business relationships in paper industry also applied in the present case, including all parts of document (25) and any information exchanged between Corbehem and Voith. He disputed that parts of the arrangement shown in document (25) originated from Mr Villarmet and not from Mr Baldini.

VI. Prior to withdrawing the opposition with a letter dated 18 June 1998, the Respondent questioned the validity of the statements of Mr Baldini and Mr Delaroche for being contradictory. He further questioned whether there existed a bar of confidentiality concerning the invention contained in document (25), the latter containing far more information than the invention itself. In addition, so he argued, Corbehem was entitled to disseminate the invention, not only because at least one feature thereof was proposed by Mr Villarmet, but also because in the imprint on document (25) it was stated that the information contained in the drawing should be used as an instruction for the maintenance and supply/delivery of the machine. The invention had further been made available to the public by disclosure to Voith; this being evidenced by document

(6) drawing Voith PM5, dated 21 December 1988.

VII. The Appellant requested

- that the decision under appeal be set aside and that the patent be upheld as granted (main request) or, alternatively,
- that the patent be upheld in amended form as filed with the appeal brief and that oral proceedings be held (auxiliary request I), or
- that the matter be remitted to the Opposition Division if the Board intended to revoke the patent because of other reasons than those leading to the decision under appeal (auxiliary request II).

Reimbursement of the appeal fee was also requested on the basis that the Opposition Division had committed a substantial procedural violation by rendering the decision under appeal in breach of Article 113(1) EPC.

**Reasons for the Decision**

1. *Prior use alleged by former Opponent I*

The assertions concerning prior use contained in the opposition brief of the former Opponent I were based essentially on the following alleged factual circumstances:

- 1.1 Corbehem decided to order a new paper machine. They invited, therefore, inter alia the three world-wide leading companies for development and construction of

paper machines, i.e. Beloit, Valmet Paper Machinery Inc. (Valmet) and Voith, to make offers. In the course of the bidding process, Corbehem decided that the machine should be equipped with a so-called "single-tier" dryer group. Several drawings and sketches, i.e. documents (3) to (7), were therefore exchanged between Corbehem and the competing companies, without finalizing formal secrecy agreements. It is noted that in the present case the term "prior use" exclusively means the use of such drawings in the course of a bidding process. After Voith finally had been commissioned to build the machine, they had communicated the concrete machine design which contained the invention to subcontractors. In this context, documents (8) to (10) were cited by former Opponent I.

1.2 In his letter dated 18 October 1994 in response to the oppositions, the Appellant (Proprietor) explained that there was no public disclosure of the invention neither under Article 54(2) EPC prior to the filing date of the patent in suit, nor under Article 55(1) EPC prior to six month before the filing date of the patent in suit (pages 4 to 6 of said letter). He further declared that all the information exchanged between Corbehem and the three manufacturers as well as between Voith and its subcontractors were confidential and non-prejudicial to the patentability of the subject-matter claimed in the patent in suit (page 5, last full paragraph of said letter).

1.3 The Opposition Division has already questioned in their annex to the summons to oral proceedings whether documents (3) to (10), were sufficient to prove that

the details contained therein have been made available to the public. Attention was drawn by the Opposition Division to some inconsistencies existing in these documents and to the significance of the questions "whether it was possible for members of the public to gain knowledge of the content of these documents" and whether there was "no bar of confidentiality restricting the use or dissemination of such knowledge". The Opposition Division correctly found that some of the drawings bear a stamp of confidentiality and that there existed ambiguities with respect to the dates on some documents. Further, the Opposition Division indicated that the respective allegations could be supported by sworn statements in writing from possible witnesses. However, former Opponent I did not provide any such further evidence but, instead, withdrew his opposition.

1.4 The doubts which were raised by the Opposition Division are shared by the Board who finds, therefore, that the technical drawings and letters alone, i.e. documents (3) to (10) constitute no convincing evidence for the alleged prior use.

1.5 It is established in the Case Law of the Boards of Appeal of the European Patent Office that in appeal proceedings withdrawal of the opposition(s) has no immediate procedural significance if the patent has been revoked by the Opposition Division. The Board must then investigate matters of its own motion (Article 114(1) EPC). This obligation does not, however, extend as far as investigation of an alleged prior use is concerned, if it is difficult to establish all the relevant facts without the co-operation of the

opponent(s) (see decision of the Board of Appeal T 129/88, OJ EPO 1993, 598, reasons No. 3).

Therefore, in the absence of the former Opponent's further cooperation, the Board has no reason to doubt the Appellant's credible declaration of confidentiality between all the companies involved and finds that under the circumstances of this case and based on documents (3) to (10), no public prior use of the claimed invention was convincingly established (see also point 2.5).

2. *Prior use based on document (25)*

2.1 Document (25) is a technical drawing of a paper machine filed by the Appellant during the opposition proceedings and comprises the subject-matter of present Claim 1. It is undisputed that this document has been communicated by Beloit to Corbehem. It is, further, undisputed that an imprint in Italian is present on document (25) (right-hand bottom corner) which translates into English as follows:

"This copy exclusively belongs to Beloit Italy and is reserved and to be used only as a reference for the maintenance and for the supply/delivery of Beloit machines. It cannot be copied or reproduced. Upon request it must be given back to Beloit."

Concerning the nature of information contained in this imprint, the Board is convinced that it actually represents a notice of confidentiality. In particular, from the phrases: "**It cannot be copied or reproduced**" and "**must be given back**" it becomes clear that the user

is not allowed to make and distribute copies of document (25) without the consent of Beloit, i.e. the proprietor of document (25). In order to be meaningful at all, these phrases must, of course, also include that it is generally not allowed to disseminate the contents of document (25). The same must logically apply to the phrase: **"This copy ... is reserved and to be used only as a reference for the maintenance and for the supply/delivery of Beloit machines"**, which consequently means that any such use is also subject to confidential treatment. Hence, the Board concludes that the communication of document (25) by Beloit to Corbehem has been made under a secrecy obligation, which as a matter of course extended to the whole content of said document including the invention as claimed in the patent in suit.

- 2.2 Further, the Board does not infer from the letter dated 18 October 1994 any concession of the Applicant that the subject-matter contained in document (25) had been communicated by Corbehem to Voith in breach of confidentiality and thereby had become publicly available. The relevant passages in said letter are paragraphs 7 and 8 on page 4 and the penultimate paragraph on page 5.

Paragraphs 7 and 8 merely recite the statements made by Voith in its opposition brief (pages 12 and 13) that Corbehem communicated the developments for the paper machine to be constructed to the three competitors Beloit, Valmet and Voith. In paragraph 8 of his letter, the Appellant stated that said information was confidential.

2.3 The Respondent submitted that no confidentiality obligation could have been imposed on Corbehem covering the claimed machine configuration, because at least the feature that the further tail cutter is disposed adjacent to the further open draw originated from a proposal of Corbehem's Mr Villarmet. In this respect reference was made to document (23) which is identical to document (3) filed by Voith and which represents a draft proposed by Mr Villarmet and is addressed to Mr Baldini of Beloit. The Appellant, however, asserted that Villarmet's proposal as shown in document (23) was only drawn after Beloit's drawing (24) which already contained the essential features of document (25) and of the patent in suit, in particular concerning a tail cutter upstream a second coater.

2.4 The Respondent did not provide evidence to show whether drawing (23) or drawing (24) was the first one. Therefore, the Respondent's submission that the technical feature concerned originates from Corbehem's Mr Villarmet is merely an unsubstantiated allegation and is not further considered by the Board.

2.5 On page 5 of the Appellant's letter of 18 October 1994 it is stated that "the information exchanged in breach of confidentiality between Papeterie Corbehem, Voith and Valmet, and between Voith and its subcontractors was confidential and thus non-prejudicial" to the novelty of the claimed subject-matter. The quoted passage is contradictory as such and, therefore, cannot be construed as confirmation that the invention actually has been made available to the public **"in breach of confidentiality"**. In contrast, the written statements of Mr Baldini, Mr Delaroche and Mr Grittum

filed by the Appellant, convincingly show that it is normal practice in the paper machine industry that any information communicated during a bidding process is generally treated as confidential by the companies involved.

2.6 In this context, the Respondent further contended that the claimed machine configuration had been made available to the public since - as was shown by Voith's drawing constituting document (6) - Voith knew the invention. This drawing, however, includes a Voith confidentiality stamp and, hence, shows that any such knowledge was confidential.

2.7 According to the Respondent (page 5, point 4.4, second paragraph of his letter dated 2 August 1996) the statements of Mr Baldini and Mr Delaroche were contradictory because Mr Baldini stated that confidentiality was particularly stressed in the case of communication of document (25) (section 3 of the statement) whereas Mr Delaroche stated that a prospective supplier did not tend to highlight new and inventive details (section 9 of the statement) and that there was nothing different in the particular case of document (25) (section 11 of the statement). The Board notes in this context that Mr Delaroche in a section 10 further credibly stated that "it is unusual in paper industry for formal terms of confidentiality to be signed before a bidding process". Since there is no reason to assume that any stress laid on confidentiality in the statement of Mr Baldini necessarily implies a particular action such as signing a confidential disclosure agreement, the Board does not see any conflict between the statements of Mr Baldini



and Mr Delaroche. More importantly, however, the Respondent explicitly conceded that all details of Beloit's bid, including document (25), were submitted in confidence in accordance with the common practice in the paper industry (page 5, point 4.4, first paragraph and page 7, point 6.2 of said letter).

In the absence of any further evidence, the Board holds, therefore, that any information concerning Beloit's disclosure to Corbehem, which possibly has been communicated to Voith and its subcontractors did not become available to the public but was kept confidential in accordance with the confidentiality practice which was common in paper machine industry. In this context it is irrelevant whether the information has been communicated to the most relevant companies in the paper machine industry and their subcontractors, if - as can be accepted in the present case for the reasons given above - these companies were obliged and accepted to treat said information confidentially.

Therefore, in the Board's judgment, the contents of document (25) does not constitute prior art within the meaning of Article 54(2) EPC.

3. *Other cited prior art*

3.1 Novelty (main request)

In the course of the opposition proceedings, the Opponents cited documents (1), (2) and (11) to (19). As will be evident from the following discussion of inventive step, none of these documents discloses the claimed subject-matter. This not being contested, no

detailed reasoning is required here.

For these reasons, the Board concludes that the subject-matter of Claim 1 is novel.

3.2 Inventive step (main request)

3.2.1 The patent in suit refers to a paper coating apparatus having a coater and a single tier coating dryer group downstream of said coater (column 1, lines 3 to 8). Document (2) is cited as a starting point. This document relates to an off-line coater which, as a matter of course, is to be used in connection with and subsequent to a paper manufacturing machine where the web is formed, pressed, dried, calendered and wound in preparation for the subsequent batch mode coating (patent in suit, column 1, lines 31 to 42; document (1), column 1, lines 20 to 52 and column 5, lines 34 to 37). The coater includes an unwind stand, followed by a tail cutter, a pull stack (kind of calender), a coating apparatus, at least one coating drying group and a rewind drum (column 7, line 42 to column 8, line 15 and Figure 1).

In his opposition brief, the Respondent started from document (14) as the closest prior art. This document refers to a drying apparatus as part of a paper machine for drying a web of paper emerging from the press section of a paper machine. The drying apparatus is of the same kind as according to Claim 1 of the patent in suit and as described therein as the "Total Bel Run® dryer arrangement" (column 1, lines 9 to 21), which was in particular developed to overcome sheet flutter and web breakage occurring with modern paper drying machines running at web speeds of 10,000 feet/min or higher and has, therefore no open draws (document (14), page 14, paragraphs 1 and 2; page 1, first paragraph and page 3, second full paragraph). Document (14) does not, however, relate to an apparatus including a coater. Therefore, the Board holds that document (14) is less relevant than document (2), and consequently takes the latter as starting point for the evaluation of inventive step.

3.2.2 Document (2) is silent on the kind of paper machine and dryer section by which the upwound paper to be coated had been produced. However, the off-line arrangement including a tail cutter in the coater apparatus according to document (2) has also been proposed to meet the high velocity demands of modern paper machines (column 2, lines 39 to 68). Hence, the Board holds that according to document (2) a paper machine suitable for being combined with the defined coater arrangement includes a BelRun-type drying section as is described in document (14).

It is set out in the patent in suit that the problem to be solved in view of this prior art consists in the

provision of an on-line coater apparatus of compact dimensions, thereby reducing the costs of construction thereof (column 1, lines 43 to 47). From the whole content of Claim 1 as well as from the patent specification it is clear that the term "on-line coater apparatus" means a coater apparatus which is on-line connected with and including a paper machine. The Respondent in his opposition brief also expressed this view.

According to Claim 1 of the patent as granted, the above defined problem is solved by arranging a tail cutter adjacent to an open draw of the web extending between the last two single-tier BelRun-type dryer groups of a paper machine for cutting a tail from the web and subsequent threading the tail through the last dryer group. This last dryer group is then followed by a calender, a coater, a single-tier coating dryer and a final winding means.

The Board is convinced that the problem is thereby solved because the resulting on-line arrangement is more compact than an off-line arrangement which necessarily includes an intermediate winder and an unwind-reel.

- 3.2.3 Documents (2) and (14) cannot give a hint for the proposed solution since they do not describe the combination of a paper machine including a dryer section with a coating apparatus. If at all, document (2) would rather suggest to arrange a tail-cutter adjacent to an open draw between the last dryer group of the paper machine and the calender of the coating apparatus instead of between the last two dryer

groups of the paper machine (see Figures 1 and 2). While mentioning that a size press may be arranged subsequent to the single-tier drying sections, document (14) does not disclose any precise arrangement of the respective machine sub-units (page 31, last paragraph). Moreover, document (14) does not use any tail-cutters at all and explicitly works without open draws, in particular between the dryer groups (page 14, second paragraph). Therefore, the claimed solution is not foreshadowed in document (14) either alone or in combination with document (2).

- 3.2.4 Nor is the proposed solution of the existing technical problem obvious in the light of the remaining cited prior art.

All the documents (1), (11) to (13) and (15) to (19) disclose subject-matter which is more remote from that of the claimed solution than that disclosed in document (14):

Document (1) is even less informative on the machine set-ups than document (14); document (11) merely relates to a paper cutting device comprising a tail-cutter arrangement adjacent to an open draw; documents (12), (17) and (18) do not involve any intermediate cutting and re-threading of the paper web; citations (15) and (16) disclose a two-tier UnoRun-type drying section (for the differences between BelRun-type and UnoRun-type dryer arrangements see document (19), page V 155) and give no or different details concerning its on-line connection with the coating unit; document (13) does not disclose a specific paper machine configuration either and merely discloses an

off-line coater without tail-cutter (cf. figure); document (19) is an overview concerning dryer sections without open draws and, although mentioning the use of the BelRun dryer arrangement for manufacturing light weight coated (LWC) paper, stipulates that no open draws are present in the dryer arrangement (page V 157, last two paragraphs of the overview and Figure 1a).

3.2.5 It follows from the above that none of the cited documents either alone or in combination suggests or even hints to the proposed provision of an open draw and adjacent tail cutter between the last two single-tier dryer groups of a paper machine with subsequent on-line coater apparatus.

3.2.6 No other result is obtained if one starts from document (14) as the closest prior art as suggested by the Respondent.

In the opposition brief, the Respondent submitted that the claimed subject-matter differed from the apparatus disclosed in document (14) merely by the three features concerning the tail cutter, the coater and the coating dryer group. These features did not, however, solve the problem set out in the patent in suit which consisted in providing a compact machine. Instead, every single distinguishing feature solved a particular problem which was independent from the other ones: i.e. the tail cutter solved the problem of an on-line arrangement, the coater solved the problem of improved printability and the single-tier coating dryer solved the problem of open draws.

This approach amounts, however, to a typical *ex post*

*facto* analysis since it incorrectly presumes that it was generally accepted in the art that a high velocity single-tier BelRun dryer arrangement without open draws as disclosed in document (14) was equally suited for both on-line and off-line connection with a coater apparatus.

The problem actually solved in view of document (14) is in the Board's opinion, therefore, to provide a compact array of a BelRun paper machine suitable for producing coated paper. For the same reasons as set out in sections 2.3.1 and 2.3.2 above, the solution proposed in Claim 1 of the patent in suit is not made obvious by the cited prior art. In particular, document (2) leads away from an on-line arrangement for machines running at high speed.

- 3.3 The Board holds, therefore, that none of the cited prior art documents, either individually or in combination, renders obvious the claimed solution of the existing technical problem, and concludes that the apparatus of Claim 1 as granted is based on an inventive step within the meaning of Articles 52(1) and 56 EPC.

Dependent Claims 2 to 10 which refer to preferred embodiments of Claim 1 and Claim 11 which relates to a method for coating a web by using the individual parts of the apparatus of Claim 1 in their given succession, are based on the same inventive concept and derive their patentability from that of Claim 1.

4. Since the above findings correspond to the grant of the Appellant's main request, the auxiliary requests need

not to be considered.

5. *Procedural violation*

The Appellant advanced the reproach that the Opposition Division infringed his right to be heard under Article 113(1) EPC because it revoked the patent in regard of document (25) as a public prior art without giving in advance any information that it did not agree with the Appellant's statements concerning the confidential nature of said document, which was not even contested by the Opponent.

The circumstances of the present case do not however, in the Board's judgment, justify a reimbursement of the appeal fee due to a substantial procedural violation (Rule 67 EPC) for the following reasons:

The Opposition Division in its annex to summons to oral proceedings, although realizing that there was a stamp of confidentiality on document (25), nevertheless clearly put at issue whether or not the content of document (25) was available to the public before the filing date of the patent in suit (see sections 1a, 1b and 2 of the annex). Therefore, the Opposition Division gave the Appellant the possibility to comment on this issue and to submit pertinent evidence if the Appellant deemed this to be helpful.

Therefore, the requirements of Article 113(1) EPC were met and no procedural violation was committed by the Opposition Division. Whether or not any other party commented on this issue is of no relevance to the Appellant's right to be heard by the Opposition



Division. Any finding of the Opposition Division in respect to the meaning of the imprint on document (25), however, is a finding on substantive matter and has no relation to procedural law.

For these reasons the request for reimbursement of the appeal fee must be rejected.

### **Order**

#### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is maintained as granted.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

G. Rauh

P. Krasa