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**D E C I S I O N**  
**of 1 August 2001**

**Case Number:** T 0910/96 - 3.3.5

**Application Number:** 90912009.9

**Publication Number:** 0482102

**IPC:** B01F 1/00

**Language of the proceedings:** EN

**Title of invention:**

Apparatus for dissolving a granulate, primarily a predetermined quantity of ferrous sulfate granulate with water

**Patentee:**

Tunetanken, A/S

**Opponent:**

Kronos International, Inc.  
Rossmark, van Wijk & Boerma

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

"Amendments - added subject-matter (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0910/96 - 3.3.5

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.5**  
**of 1 August 2001**

**Appellant:** Kronos International, Inc.  
(Opponent) Postfach 10 07 20  
D-51307 Leverkusen (DE)

**Opponent:** Rossmark, van Wijk & oerma  
Bornestraat 289  
7601 GJ Almelo (NL)

**Representative:** Schumann, Bernard Herman Johan  
Arnold & Siedsma  
Avocaten en Octrooigemachtigden  
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**Respondent:** Tunetanken, A/S  
(Proprietor of the patent) St. Andst  
6600 Vejen (DK)

**Representative:** Lichtenberg, Erik  
Chas. Hude  
33 H.C. Andersen Boulevard  
1553 Copenhagen V (DK)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 31 July 1996  
rejecting the opposition filed against European  
patent No. 0 482 102 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** R. K. Spangenberg  
**Members:** A.-T. Liu  
J. H. van Moer

## Summary of Facts and Submissions

- I. European patent No. 0 482 102 was granted with a set of claims consisting of an independent claim 1 for an apparatus and claims 2 to 4 depending thereon. Claim 1 reads as follows:

"Apparatus for dissolving a granulate, primarily a predetermined quantity of ferrous sulphate granulate, with water, comprising a tank, a filler hole for introducing the granulate, water inlet means for supplying water to the tank, a primary water supply device provided at the bottom of the tank and connected to the water inlet means and a defined area for accumulating and discharging the solution, **characterised** in that there are one or several primary water supply devices (2) connected to the water inlet means by connection means (10), each primary water supply device covering a defined area of the bottom (3) of the tank (1), the primary water supply device(s) evenly covering the entire bottom (3) of the tank in such a way that the entire extent of the primary water supply device(s) (2) principally provides the same water discharge outlet area per unit area of the bottom (3) of the tank (1), that at least one primary water supply device (2), principally in its entire extent, is subdivided into two or more secondary water supply devices (2', 2'') in such a way as to cover separate, smaller areas of any defined area of the bottom (3) of the tank (1) and in that control system means for the water inlet means are provided, which control the water supply in such a way as to supply water in predetermined quantities per unit time and for a predetermined period of time **alternatively** (emphasis

- added) to the secondary water supply devices (2',2")."
- II. Two notices of opposition were filed against the patent on the grounds of Articles 100(a), (b) and (c) EPC, and 21 prior art documents cited in support of these oppositions.
- III. At the end of oral proceedings held on 5 July 1996, the opposition division gave the decision that the grounds for opposition did not prejudice the maintenance of the patent unamended.
- IV. An appeal was lodged by opponent Rossmark, van Wijk & Boerma. In the statement of the grounds, the appellant maintained that the word "alternatively" in claim 1 was defective as it did not have a basis in the application documents as filed. It should be replaced by "alternately"; only then could the inventive step be correctly assessed.
- V. With the response to the statement of grounds of appeal, the respondent argued that, in the context of the patent, both terms have the same meaning.
- VI. In a communication dated 10 July 2000, the Board expressed its preliminary view that the term "alternatively" was used erroneously and suggested that it be replaced by "alternately" to be in conformity with the original disclosure.
- VII. By letter of 18 July 2000, the respondent informed the Board that he had not maintained the patent by not paying renewal fees in any of the designated contracting States by expiry of the term of January 2000. By the end of June 2000, however, the European

patent register still did not have on record that the patent in suit had lapsed in all the designated Contracting States.

VIII. The appellant's request was that the decision under appeal be set aside and that the patent be revoked.

The respondent's request was that the appeal be dismissed.

### **Reasons for the Decision**

1. It is undisputed that claim 1 as granted is a combination of the originally filed claims 1 and 2. In claim 2 as filed, it is stipulated that "the water supply device (2) is connected to a water inlet means provided in such a way as to supply water in predetermined quantities per unit time and period of time optionally and alternately (emphasis added) to the separate water supply devices (2',2)".
  
2. As synonym for "alternately", such word as "intermittently" would normally come to mind (see Merriam-Webster Thesaurus, 1978). As is clear from the original description, for example page 8, lines 1 to 12, "alternate" is indeed used in the patent application in this normally accepted sense. In the context of the patent, it is thus necessary that the control system means for the water inlet means are such as to provide water first to one water supply device, for example (2'), then subsequently to the other water supply device (2") and vice versa.

On the other hand, the synonym for "alternatively" is "instead" (see Merriam-Webster Thesaurus, 1978). In the context of present claim 1, this would stipulate that the control system means for the water inlet are to only provide water to one or the other of the water supply devices (2',2"). In other words, the control system would be such that the water supply is limited to a selection between these two options (or alternatives).

3. As is already noted in the communication dated 10 July 2000, and not refuted by the respondent, the term "alternatively" is thus not being used in the normally accepted sense. On the other hand, there is no indication in the original documents that would allow a special use of "alternatively" in the context of the patent as synonym for the term "alternately". The amendment introducing the term "alternatively" into claim 1 therefore does not have a basis in the application documents as filed (Article 123(2) EPC). As a consequence, claim 1 as amended is not allowable.

## **Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Rauh

R. Spangenberg