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

Case Number: T 0605/22 - 3.2.07

Application Number: 13185893.8

Publication Number: 2724783

IPC: B05C5/02, B05C11/10

Language of the proceedings: EN

Title of invention:

Dispensing system and methods for monitoring actuation signals
for diagnostics

Patent Proprietor:

Nordson Corporation

Opponent:

Baumer hhs GmbH

Relevant legal provisions:

EPC Art. 54

RPBA 2020 Art. 12(6), 13(2)

Keyword:

Novelty - (no) - main request

Late-filed evidence - admitted (no)

Late-filed requests - admitted (no)

Auxiliary requests - should have been submitted in first-
instance proceedings (yes)

Auxiliary requests - admitted in opposition proceedings (no)

Decisions cited:

T 1852/11, T 1201/14, T 1525/17, T 1425/16, T 0110/18



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Case Number: T 0605/22 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 21 June 2023

Appellant: Nordson Corporation
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 December 2021 concerning maintenance of the
European Patent No. 2724783 in amended form.**

Composition of the Board:

Chair G. Patton
Members: S. Watson
R. Winkelhofer

Summary of Facts and Submissions

- I. An appeal was filed by the patent proprietor against the decision of the opposition division maintaining European patent No. 2 724 783 in amended form with the set of claims according to then auxiliary request IV.
- II. The opposition division found that the subject-matter of claim 1 of the patent as granted was not novel (Articles 100(a) and 54 EPC) and auxiliary requests I to III were not admitted into the opposition proceedings.
- III. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA 2020, which took into account the appellant's grounds of appeal and the opponent's reply to the appeal.
- IV. The patent proprietor responded to the board's preliminary opinion with submissions of 19 May 2023.
- V. Oral proceedings before the board took place on 21 June 2023.
- VI. The requests of the parties are as follows:

for the patent proprietor (appellant):
 - that the decision under appeal be set aside and amended such
 - that the opposition be rejected (main request), or that the patent be maintained according to one of auxiliary requests I, Ia, Ib, II to XIV, whereby auxiliary requests I to XIII were filed with the statement of grounds of appeal,

auxiliary requests Ia and Ib were filed with submissions of 19 May 2023 and auxiliary request XIV is identical to the request which the opposition division found to meet the requirements of the EPC

for the opponent (respondent):

- that the appeal be dismissed.

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

- A5: Datasheet, "SolidBlue™ hot melt dispensing guns", Nordson Corporation, Georgia (US) 2005;
- A6: "2013 Measuring Broadband America February Report" FCC's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau;
- A7: Extract from Merriam-Webster dictionary, definition of "signal";
- A8: Yang, S.H. and Yang, L. "Guidance on design of Internet-based process control systems", Acta Automatica Sinica, vol. 31, No.1, pages 56 to 63, January 2005
- E1: EP 1 677 918 B1;
- E21: WO 2005/045536 A2.

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

IX. Independent claim 1 of the patent as granted (main request) reads as follows (with the same feature labelling as used in the annex to the decision under appeal):

- M1.1 "An adhesive dispensing system (10, 110, 210), comprising:
 - M1.2 a dispenser gun (18) configured to dispense adhesive onto a substrate (12);
 - M1.3 a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18),
 - M1.4 the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and
 - M1.5 a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18);
- characterized in,
- M1.6 the control system (28) monitoring the gun actuation signals, and being configured for at least one of the following:
 - M1.7 a) determining whether the gun (18) requires service in response to the gun actuation signals; and
 - M1.8 b) operating a plurality of diagnostic processes based on the monitored gun actuation signals,
 - M1.9 to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole.

X. Claim 1 of auxiliary request I corresponds to claim 1 of the patent as granted with the introduction of "that" after "characterized in".

XI. Independent claim 1 of auxiliary request Ia differs from claim 1 of auxiliary request I through the following amended feature M1.5 (additions with respect to claim 1 as granted shown underlined):

"a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18), the gun actuation signals being sent to the melter controls system (28) and then to the dispenser gun (18)".

XII. Independent claim 1 of auxiliary request Ib reads as follows (additions with respect to claim 1 of auxiliary request I underlined):

"An adhesive dispensing system (10, 110, 210), comprising:
a dispenser gun (18) configured to dispense adhesive onto a substrate (12), the dispenser gun (18) including an outlet nozzle (20), a valve for controlling flow through the nozzle (20), and a solenoid for actuating movement of the valve between open and closed positions;
a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18),
the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and
a source of gun actuation (26, 126) operatively connected to the hot melt unit (14, 114, 214) and configured to send gun actuation signals to operate the dispenser gun (18) by supplying electric gun actuation signals to operate the solenoid and therefore operate the valve within the dispenser gun (18);
characterized in that,
the control system (28) monitoring the gun actuation signals, and being configured for at least one of the following:

- a) determining whether the gun (18) requires service in response to the gun actuation signals; and
- b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole."

XIII. Independent claim 1 of auxiliary request II differs from claim 1 of auxiliary request I through the following amended feature M1.5 (additions with respect to claim 1 as granted shown underlined):

"a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18), wherein the source of gun actuation (26, 126) is a separate element from the melter control system (28)".

XIV. Independent claim 1 of auxiliary request III reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210), comprising:
a dispenser gun (18) configured to dispense adhesive onto a substrate (12);
a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18), the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and
a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18), wherein the source of gun actuation

(26,126) is a separate element from the melter control system (28);
~~characterized in that,~~wherein the control system (28) monitoring the gun actuation signals, and configured for at least one of the following:
a) determining whether the gun (18) requires service in response to the gun actuation signals; and
b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole,
further comprising:
a hose (16) connected to the hot melt unit (14, 114, 214) and to the dispenser gun (18), the hose (16) delivering adhesive from the hot melt unit (14, 114, 214) to the dispenser gun (18); and
characterized by a cable (34, 234) connected to the hot melt unit (14, 114, 214) and the dispenser gun (18), the cable delivering the gun actuation signals from the hot melt unit (14, 114, 214) to the dispenser gun (18), the cable (34, 234) positioned alongside or coupled to the hose (16) such that the size of a gun envelope defined by the dispenser gun (18) and wire connections to other components is minimized, and
a connecting device including a terminal block (130) located in the hot melt unit (114, 214), wherein the source of gun actuation is connected to the terminal block and the terminal block is connected to the dispenser gun (18) such that the gun actuation signals are terminated within the hot melt unit (114, 214), the control system monitoring (28) the gun actuation signals at the terminal block."

XV. Independent claim 1 of auxiliary requests IV and IX reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210), comprising:

a dispenser gun (18) configured to dispense adhesive onto a substrate (12);

a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18), the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and

a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18);

~~characterized in that,~~

wherein the control system (28) monitoring the gun actuation signals,

and configured for at least one of the following:

a) determining whether the gun (18) requires service in response to the gun actuation signals; and

b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole,

further comprising:

a hose (16) connected to the hot melt unit (14, 114, 214) and to the dispenser gun (18), the hose (16) delivering adhesive from the hot melt unit (14, 114, 214) to the dispenser gun (18);

characterized by a cable (34, 234) connected to the hot melt unit (14, 114, 214) and the dispenser gun

(18), the cable delivering the gun actuation signals from the hot melt unit (14, 114, 214) to the dispenser gun (18), the cable (34, 234) positioned alongside or coupled to the hose (16) such that the size of a gun envelope defined by the dispenser gun (18) and wire connections to other components is minimized, and a connecting device including a terminal block (130) located in the hot melt unit (114, 214), wherein the source of gun actuation is connected to the terminal block and the terminal block is connected to the dispenser gun (18) such that the gun actuation signals are terminated within the hot melt unit (114, 214), the control system monitoring (28) the gun actuation signals at the terminal block."

XVI. Independent claim 1 of auxiliary requests V, X and XI reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210), comprising:
a dispenser gun (18) configured to dispense adhesive onto a substrate (12);
a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18), the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and
a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18);
~~characterized in that~~

wherein the gun actuation signals being sent to the melter control system (28) and then to the dispenser gun (18), and

wherein the control system (28) monitoring the gun actuation signals, and configured for at least one of the following:

a) determining whether the gun (18) requires service in response to the gun actuation signals; and

b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole,

wherein the system (10, 110, 210) further comprises:

a hose (16) connected to the hot melt unit (14, 114, 214) and to the dispenser gun (18), the hose (16) delivering adhesive from the hot melt unit (14, 114, 214) to the dispenser gun (18); and a cable (34, 234) connected to the hot melt unit (14, 114, 214) and the dispenser gun (18), the cable delivering the gun actuation signals from the hot melt unit (14, 114, 214) to the dispenser gun (18), the cable (34, 234) positioned alongside or coupled to the hose (16) such that the size of a gun envelope defined by the dispenser gun (18) and wire connections to other components is minimized, characterized in that the plurality of diagnostic processes includes one or more of the following: monitoring life cycles of components of the dispenser gun (18); enabling a standby state during long periods without actuation of the dispenser gun (18); adjusting fluid pressure delivered by the hot melt unit (14, 114, 214) based on line speed at the dispenser gun (18); comparing actuation parameters

of the hot melt unit (14) and the dispenser gun (18) to identify error states; or shifting a reversal of a piston pump within the hot melt unit (14, 114, 214) to avoid pump wink at the dispenser gun (18)."

XVII. Independent claim 1 of auxiliary requests VI and XII reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210), comprising:

a dispenser gun (18) configured to dispense adhesive onto a substrate (12);

a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18), the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and

a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18);

~~characterized in that~~

wherein the gun actuation signals being sent to the melter control system (28) and then to the dispenser gun (18), and

wherein the control system (28) monitoring the gun actuation signals, and configured for at least one of the following:

a) determining whether the gun (18) requires service in response to the gun actuation signals; and

b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18)

and operation of the dispensing system (10) as a whole,
wherein the system (10, 110, 210) further comprises:
a hose (16) connected to the hot melt unit (14, 114, 214) and to the dispenser gun (18), the hose (16) delivering adhesive from the hot melt unit (14, 114, 214) to the dispenser gun (18); and a cable (34, 234) connected to the hot melt unit (14, 114, 214) and the dispenser gun (18), the cable delivering the gun actuation signals from the hot melt unit (14, 114, 214) to the dispenser gun (18), the cable (34, 234) positioned alongside or coupled to the hose (16) such that the size of a gun envelope defined by the dispenser gun (18) and wire connections to other components is minimized characterized in that the plurality of diagnostic processes includes one or more of the following: adjusting fluid pressure delivered by the hot melt unit (14, 114, 214) based on line speed at the dispenser gun (18); comparing actuation parameters of the hot melt unit (14) and the dispenser gun (18) to identify error states; or shifting a reversal of a piston pump within the hot melt unit (14, 114, 214) to avoid pump wink at the dispenser gun (18)."

XVIII. Independent claim 1 of auxiliary requests VII and XIII reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210), comprising:
a dispenser gun (18) configured to dispense adhesive onto a substrate (12);

a hot melt unit (14, 114, 214) configured to heat adhesive and pump adhesive to the dispenser gun (18), the hot melt unit (14, 114, 214) including a melter control system (28) controlling operation of the hot melt unit (14); and
a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18);

~~characterized in that~~

wherein the gun actuation signals being sent to the melter control system (28) and then to the dispenser gun (18), and

wherein the control system (28) monitoring the gun actuation signals, and configured for at least one of the following:

- a) determining whether the gun (18) requires service in response to the gun actuation signals; and
- b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole,

wherein the plurality of diagnostic processes includes one or more of the following: monitoring life cycles of components of the dispenser gun (18); enabling a standby state during long periods without actuation of the dispenser gun (18); adjusting fluid pressure delivered by the hot melt unit (14, 114, 214) based on line speed at the dispenser gun (18); comparing actuation parameters of the hot melt unit (14) and the dispenser gun (18) to identify error states; or shifting a reversal of a piston pump within the hot melt unit (14, 114, 214) to avoid pump wink at the dispenser gun (18),

wherein the system (10, 110,210) further comprises:
a hose (16) connected to the hot melt unit (14,
114, 214) and to the dispenser gun (18), the hose
(16) delivering adhesive from the hot melt unit
(14,114, 214) to the dispenser gun (18); and
a cable (34, 234) connected to the hot melt unit
(14, 114, 214) and the dispenser gun (18), the
cable delivering the gun actuation signals from the
hot melt unit (14, 114, 214) to the dispenser gun
(18), the cable (34, 234) positioned alongside or
coupled to the hose (16) such that the size of a
gun envelope defined by the dispenser gun (18) and
wire connections to other components is minimized,
characterized in that the system (10, 110,210)
further comprises:
a connecting device including a terminal block
(130) located in the hot melt unit (114, 214),
wherein the source of gun actuation is connected to
the terminal block and the terminal block is
connected to the dispenser gun (18) such that the
gun actuation signals are terminated within the hot
melt unit (114, 214), the control system monitoring
(28) the gun actuation signals at the terminal
block.

XIX. Independent claim 1 of auxiliary request VIII reads as follows (additions with respect to claim 1 of auxiliary request I shown underlined, deletions shown struckthrough):

"An adhesive dispensing system (10, 110, 210),
comprising:
a dispenser gun (18) configured to dispense
adhesive onto a substrate (12);
a hot melt unit (14, 114, 214) configured to heat
adhesive and pump adhesive to the dispenser gun
(18), the hot melt unit (14, 114, 214) including a

melter control system (28) controlling operation of the hot melt unit (14); and

a source of gun actuation (26, 126) configured to send gun actuation signals to operate the dispenser gun (18), wherein the source of gun actuation (26, 126) is a separate element from the melter control system (28);

~~characterized in that, wherein~~

the control system (28) monitoring the gun actuation signals, and configured for at least one of the following:

a) determining whether the gun (18) requires service in response to the gun actuation signals; and

b) operating a plurality of diagnostic processes based on the monitored gun actuation signals, to thereby monitor operation of the dispenser gun (18) and operation of the dispensing system (10) as a whole,

further comprising: a hose (16) connected to the hot melt unit (14, 114, 214) and to the dispenser gun (18), the hose (16) delivering adhesive from the hot melt unit (14, 114, 214) to the dispenser gun (18); and

a cable (34, 234) connected to the hot melt unit (14, 114, 214) and the dispenser gun (18), the cable delivering the gun actuation signals from the hot melt unit (14, 114, 214) to the dispenser gun (18), the cable (34, 234) positioned alongside or coupled to the hose (16) such that the size of a gun envelope defined by the dispenser gun (18) and wire connections to other components is minimized, characterized by a connecting device including a terminal block (130) located in the hot melt unit (114, 214), wherein the source of gun actuation is connected to the terminal block and the terminal

block is connected to the dispenser gun (18) such that the gun actuation signals are terminated within the hot melt unit (114, 214), the control system monitoring (28) the gun actuation signals at the terminal block."

Reasons for the Decision

Novelty - Article 100(a) EPC - Article 54 EPC - E21

1. The opposition division found that the subject-matter of claim 1 of the patent as granted was not novel with respect to the disclosure of document E21.
2. The appellant argues that this finding was incorrect for the following reasons:
 - (a) the opposition division was incorrect in admitting document E21 into the proceedings
 - (b) feature M1.5 (and consequently features M1.6 to M1.9) is not present in E21 as the remote controller 111 is not a source of gun actuation
 - (c) E21 is silent about how diagnostic processes are carried out so that features M1.7 to M1.9 are not unambiguously disclosed.
3. *Admittance and consideration of E21*

The opposition division admitted late-filed document E21 into the opposition proceedings as it was considered prima facie relevant for the decision to be taken.

- 3.1 The appellant requested that this document be disregarded. It was argued that the opposition division should have considered that E21 was not more relevant

than document E1 which was already on file and that the opposition division disregarded the appellant's detailed argumentation presented at the oral proceedings.

The appellant further argued that the opposition division had incorrectly used its discretion because it did not require the respondent to show prima facie relevance, but rather required the appellant to show that the document was prima facie not relevant.

3.2 As brought forward by the respondent, it is well-established case law that it is not for a board, when reviewing a discretionary decision of an opposition division, to consider all the facts and circumstances of the case as if it were the opposition division to see if it would have made the same decision. A board may only overrule such a discretionary decision if the opposition division reached its decision by using the wrong principles, without taking into account the right principles or in an arbitrary or unreasonable way (CLB, *supra*, IV.C.4.5.2 and V.A.3.4.1b)).

3.3 The opposition division found that document E21 was prima facie relevant for the novelty of claims 1 and 10 as figure 3 and paragraph [0044] disclosed a hot melt dispensing system with diagnostics. The fact that other documents on file could possibly have been more relevant than E21 does not play a role for assessing its own intrinsic prima facie relevance. In addition to the full analysis of the relevance of E21 submitted by the respondent on 22 January 2020, the opposition division heard both parties' arguments in relation to admittance of document E21, at the oral proceedings, see minutes, page 2, first paragraph. As a consequence,

the respondent provided the arguments regarding the prima facie relevance of E21.

According to the case law of the boards of appeal, prima facie relevance is a decisive criterion for admitting and considering late-filed documents (CLB, *supra*, IV.C.4.5.3a)).

Therefore the opposition division used the correct principles and did not use its discretion in an arbitrary manner.

That the opposition division disagreed with the appellant's position on the prima facie relevance of E21 is not an indication that the opposition division did not take the appellant's arguments into consideration or exercised its discretion incorrectly, only that it found the respondent's arguments more convincing. This is reflected in the decision under appeal, point II.3.1.

- 3.4 Above all, the EPC does not provide any legal basis for excluding, in appeal proceedings, documents which were already correctly admitted into the first-instance proceedings, particularly if the contested decision was based on them (Case Law of the boards of appeal (CLB), 10th edition 2022, V.A.3.4.4; for example, see T 1852/11, reasons 1.3; T 1201/14, reasons 2.; T 1525/17, reasons 4.3; T 1425/16, VII.2.3; T 110/18, reasons 3.).

Therefore, there is no room to disregard document E21 in the appeal proceedings.

4. *Feature M1.5 - consideration of documents A5 to A8*

4.1 With submissions of 19 May 2023, after the summons to oral proceedings, the appellant filed new documents A5 to A8 in support of the arguments relating to the skilled person's interpretation of feature M1.5.

4.2 The respondent requested that these documents not be admitted into the appeal proceedings as no exceptional circumstances were present, as required by Article 13(2) RPBA 2020.

4.3 The appellant argued that the filing of the new documents was a reaction to a surprising change in interpretation of feature M1.5 by the board in its preliminary opinion.

According to the appellant, the interpretation by the board that M1.5 did not exclude that a gun actuation signal be sent to a controller which then actuates the gun, was broader than the opposition division's interpretation.

4.4 The board disagrees. In the decision under appeal (page 5) the opposition division states with respect to the disclosure of M1.5 in E21, that "*fig 3 in combination with par. [0042-44], clearly state that device 111 enables remote communication of the local controller which includes the control of the guns.*" Therefore the opposition division also interpreted feature M1.5 as not excluding that a gun actuation signal is sent (from remote controller 111) to a controller, which controls the guns.

Further, the respondent also addressed this point in the reply to the appeal, see page 8, first paragraph,

where it was argued that either the remote controller 111, the controller 68 or both controllers together could be seen as a source of gun actuation.

Therefore there was no change in interpretation of this feature, irrespective of the question whether a change in interpretation alone can be regarded as giving rise to exceptional circumstances, which would have justified the filing of new evidence at such a late stage of the proceedings.

4.5 Documents A5 to A8 are therefore not considered in the appeal proceedings (Article 13(2) RPBA 2020).

5. *Feature M1.5 - substantive considerations*

5.1 The appellant essentially argued that feature M1.5 required that a source of gun actuation was part of the dispensing system and that the gun actuation signals were not processed or modified in any way between being sent by a source of gun actuation and operating the dispenser guns.

Therefore the remote controller 111 of E21 could not be a source of gun actuation as it was not part of the dispensing system; was an optional device and was incapable of providing the signals to enable the dispensing guns to operate.

5.2 The appellant's arguments are not convincing. An "adhesive dispensing system" has to be understood broadly, there is nothing in claim 1 which would limit the system to only consisting of local, stationary components as submitted by the appellant.

5.3 The appellant's arguments with respect to the remote controller 111 being optional in E21 and therefore a further source of gun actuation being required in the disclosed system to anticipate feature 1.5, are also not convincing as the claim does not exclude that a signal is sent from a source of gun actuation to the melter control system and then to the dispenser guns, as set out in claim 3 as granted.

As correctly argued by the respondent, the claims are not limited to a gun actuation signal being sent to the melter control system and a completely identical signal being then sent to the dispenser guns.

The appellant has argued that claim 3 has to be understood as referring to the same electrical signal being sent to the control system and then to the dispenser gun, but the skilled person would understand that sending a signal to a control system and then to an operating unit can also involve modification of the signal, in particular as there is no limitation in the claim relating to the type of signal or the operation of the dispenser guns. In this respect, the expression "gun actuation signals" only defines the signals in their function to transmit information suitable to actuate the gun.

5.4 The appellant further argued that the remote controller 111 of E21 was unable to provide signals to enable the dispensing guns to operate as the skilled person was aware that dispenser gun valves must be operated at such speeds that wireless signals, in particular via the internet, would delay signal transmission to an unacceptable extent.

According to established case law, a claim is read with a mind willing to understand, however, this does not require that a broad term must be interpreted narrowly. A claim should typically be given its broadest technically sensible meaning by the reader (CLB, *supra*, II.A. 6.1).

Claim 1 is not directed to any specific type of dispenser gun, indeed no valve at all is mentioned, no operating speeds are given in the claim and wireless control is not excluded. These limitations cannot be read onto the claim.

Therefore, as argued by the respondent, a source of gun actuation configured to send gun actuation signals to operate the dispenser gun is disclosed in E21 either by the remote controller 111, the controller 68 or a combination of both.

6. *Features M1.6 to M1.9*

6.1 The appellant argues that the melter control system in document E21 does not monitor gun actuation signals and document E21 does not disclose that diagnostic processes are carried out based on these signals.

6.2 The board however agrees with the opposition division that paragraphs [0042] to [0044] explicitly mention that the hot melt system 60 is monitored by the controller 68. In this respect, E21 discloses that the server 26 **receives the information from the controller 68** and that "[s]uch information (also, operational events) include but is not limited to sensor information, temperature, pressure (including tank and/or nozzle), system settings, bead or disposition monitoring and accumulative cycles count as an

indication of predicted failure", see in particular paragraph [0043]. Hence, contrary to the appellant's view, the skilled person would directly and unambiguously derive that the controller 68 itself is configured for providing this information, i.e. for operating diagnostic processes based on the monitored gun actuation signals.

The appellant argued that the accumulated cycle count in E21 could come from other sources and would not necessarily match and correspond to the claimed monitoring of gun actuation signals. The board, however, follows the argument of the respondent that monitoring must be interpreted broadly in the absence of any further claimed limitations defining how the monitoring should take place. In line with the reasoning given by the opposition division, an accumulated cycle count must be at least indirectly based on a gun actuation signal so that the controller 68 must monitor, at least indirectly and to some extent if not directly and exactly, the gun actuation signals.

The board also does not follow the appellant's view that the signals should be the same throughout claim 1 as the use of the definite article in features M1.6 to M1.8 does not exclude any kind of processing of the signals.

- 6.3 The appellant further referred to paragraph [0037] of E21 and argued that each manifold had its own controller which, instead of controller 68, could monitor and send the information about cycle times via the internet.

This argument is not convincing as it is purely hypothetical, and is contrary to the explicit

disclosure of E21 as reflected in paragraph [0043] cited above. Furthermore, paragraph [0037] concerns multiple hot melt systems having for each manifold of each hot melt system a controller similar to controller 68 for a single hot melt system. This disclosure does not contradict the previous discussion on the controller 68 for a single hot melt system.

Further, as disclosed in paragraph [0036] of E21, the "[s]erver 26 exchanges information with controller 68 regarding the hot melt system 60, optionally **including information regarding the guns 64**" (emphasis by the board). Hence, contrary to the appellant's view, the controller 68 is also configured to monitor the dispenser guns 64.

- 6.4 The appellant has therefore not convincingly demonstrated that the decision under appeal was incorrect in finding that claim 1 of the patent as granted lacked novelty with respect to the disclosure of E21.

Admittance and consideration of auxiliary requests I, Ia, Ib and II to XIII

7. The respondent requested that none of the auxiliary requests be considered in the appeal proceedings as they did not form part of the decision under appeal or were not admitted into the opposition proceedings (Articles 12 and 13 RPBA 2020).

8. Auxiliary request I

- 8.1 Claim 1 of auxiliary request I is identical to claim 1 of the patent as granted, it is therefore unnecessary to discuss the admittance of this request as it is not

allowable for the same reasons as given above for the main request. This was not disputed by the appellant.

9. Auxiliary requests Ia and Ib

The appellant filed new auxiliary requests Ia and Ib with submissions of 19 May 2023, i.e. after the notification of a summons to oral proceedings.

The appellant argued that the filing of new requests at such a late stage of the proceedings was justified for the same reasons as the filing of new evidence A5 to A8, namely due to the alleged broader interpretation by the board of feature M1.5.

As set out above in point 4.4, the board used the same interpretation in its preliminary opinion for feature M1.5 as the opposition division in the decision under appeal.

As no exceptional circumstances, justified by cogent reasons, are present, auxiliary requests Ia and Ib are not taken into account (Article 13(2) RPBA 2020).

10. Auxiliary requests II to IV, VIII and IX

10.1 It is uncontested that auxiliary requests II to IV (and correspondingly VIII and IX) are newly filed in the appeal proceedings.

10.2 According to Article 12(6), second sentence, RPBA 2020, requests which should have been submitted in the proceedings leading to the decision under appeal shall not be admitted into the appeal proceedings, unless the circumstances of the appeal case justify their admittance.

- 10.3 The appellant argued that the newly filed auxiliary requests should be admitted into the appeal proceedings as the subject-matter of the proceedings had changed.

The appellant argued that the opposition division had for the first time in the decision under appeal, clearly indicated that the remote controller 111 of E21 was regarded as the source of gun actuation. The appellant had therefore been unable to present well-prepared arguments and auxiliary requests in the opposition proceedings.

- 10.4 It appears from the written opposition proceedings that the respondent had argued that the dispensing device controller 30, shown in figure 2 and described in paragraph [0031], was a source of gun actuation.

The opposition division indicated in its preliminary opinion of 6 October 2020 that document E21 disclosed all features of claim 1, in the passages mentioned by the respondent, as well as paragraph [0044].

According to the minutes of the oral proceedings before the opposition division, see page 2, lack of novelty of claims 1 and 10 of the patent as granted, including with respect to the disclosure of E21, was discussed at the oral proceedings before the opposition division, after which the appellant had an opportunity to decide which auxiliary requests should be considered next.

The appellant argued that many interpretations of E21 had been discussed at the oral proceedings before the opposition division, without claiming, however, that the interpretation provided in the decision under appeal had not been presented by the respondent.

Already against this background, there is no reason to doubt that both parties were given the opportunity to comment on this interpretation of E21.

There is no requirement that opposition divisions set out at oral proceedings their precise reasoning on all points of a decision, it is only necessary that the parties had the opportunity to present comments on the factual and legal reasoning on which the decision is based (CLB, *supra*, III.A.2.3.1, first and second paragraphs).

This is the case here. The appellant had been aware since the second summons to oral proceedings that the opposition division held the preliminary opinion that the disclosure of document E21 was novelty-destroying for claim 1. Therefore the opposition division's decision could not have been regarded as surprising. Further, in light of this preliminary opinion, the appellant had a number of months in which to prepare auxiliary requests overcoming this objection. The appellant did in fact file close to forty auxiliary requests in response to the second summons.

The appellant then decided during the oral proceedings before the opposition division, after the opposition division indicated that the subject-matter of claims 1 and 10 of the patent as granted was not new, that the only requests pursued were auxiliary requests 4a, 6b, 6d, 7d and 8c (numbering as of 18 May 2021 submissions).

10.5 The appellant has also not shown in what way the newly filed auxiliary requests can be seen specifically as a reaction to the remote controller 111 rather than the controller 30 being considered a gun actuation source.

As brought forward by the respondent, the addition of the feature "*wherein the source of gun actuation (26, 126) is a separate element from the melter control system (28)*" in the claims of auxiliary requests II and III does not appear to overcome the findings of the opposition division with respect to E21 that the remote controller 111 was a source of gun actuation, as it would presumably also be considered a separate element from the melter control system. The other features introduced in claim 1 of auxiliary request III do not relate to the feature at stake.

In auxiliary request IV, claim 1 comprises claims 1, 4 and 5 as granted; it is not clear why the addition of claims 4 and 5 as granted would be considered able to overcome an objection of novelty based on the remote controller 111 being a source of gun actuation, but would not have been regarded as potentially able to overcome the objection if a source of gun actuation was seen as being the dispensing system controller 30.

The appellant has not demonstrated why the original interpretation of E21 precluded the filing of auxiliary requests II to IV in opposition proceedings.

The above also applies to auxiliary requests VIII and IX.

- 10.6 Therefore the circumstances of the appeal case do not justify the consideration of these requests. As the appellant could and should have filed current auxiliary requests II to IV, VIII and IX during the opposition proceedings, they cannot be admitted into the appeal proceedings (Article 12(6), second sentence, RPBA 2020).

11. Auxiliary requests V-VII and X-XIII

11.1 The respondent requested that auxiliary requests V-VII and X-XIII not be admitted into the appeal proceedings as they were based on auxiliary requests I to III in opposition proceedings.

These requests were not admitted into the opposition proceedings as they were deemed late-filed due to not being substantiated on filing and not prima facie allowable.

11.2 According to Article 12(6), first sentence, RPBA 2020 a board of appeal shall not admit requests which were not admitted into the proceedings leading to the decision under appeal unless the circumstances of the appeal case justify their admittance.

No such circumstances can be seen here, and have also not been brought forward by the appellant.

11.3 The appellant instead argued that no justification for their admittance into the appeal proceedings is required as the opposition division did not have discretion to not consider the auxiliary requests as they were filed before the time limit under Rule 116(1) EPC and substantiated in view of all relevant and timely filed prior art.

11.4 The opposition division reasoned that even if auxiliary requests I to III had formally been filed on 19 March 2021 they had not been substantiated until the oral proceedings before the opposition division.

11.5 The appellant argued thereto that as the auxiliary requests comprised only granted claims they were

substantiated in the reply to the notice of opposition of 11 March 2019 (see statement of grounds of appeal, page 64, third paragraph).

The board, however, agrees with the opposition division that as the claims filed on 19 March 2021 were filed after the opponent had submitted new documents E20 and E21, and after the opposition division's preliminary opinion of 6 October 2020 had been issued, that the appellant should have indicated why the new sets of claims overcame the new objections raised by the respondent and forming part of the opposition division's preliminary opinion. The appellant also did not indicate during the written proceedings, why, E21 was regarded as not *prima facie* relevant.

11.6 Therefore, the opposition division did have the discretion not to admit these requests as they were effectively filed only during the oral proceedings before them.

As set out above in point 3.4, according to well-established case law of the boards, the board can only overrule a discretionary decision of an opposition division if it used the wrong principles, without taking into account the right principles or in an arbitrary or unreasonable way.

The appellant has not brought forward any arguments on these points. For this reason alone, there is no room to depart from the opposition division's conclusions.

The appellant has not shown that the circumstances of the appeal case justify the admittance of the requests not considered by the opposition division.

- 11.7 Auxiliary requests V-VII and X-XIII can therefore not be admitted into the appeal proceedings (Article 12(6), first sentence, RPBA 2020).
12. In conclusion, the appellant has not convincingly shown that the decision under appeal was incorrect with respect to finding that claim 1 of the patent as granted was not novel. Auxiliary request I is not allowable for the same reasons and the further auxiliary requests could not be admitted into the appeal proceedings. The appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

G. Patton

Decision electronically authenticated