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**Datasheet for the decision
of 11 March 2026**

Case Number: T 1133/24 - 3.2.01

Application Number: 19168436.4

Publication Number: 3552947

IPC: B63B32/10, B63H11/08, B63H21/17

Language of the proceedings: EN

Title of invention:

PROPELLING MODULE AND SURFING APPARATUS HAVING THE SAME

Patent Proprietor:

Yujet International Corporation Limited

Opponents:

- 1.WBV Weisenburger Bau+Verwaltung GmbH
- 2.Radinn AB

Headword:

Relevant legal provisions:

EPC Art. 87, 56, 123(2)
RPBA 2020 Art. 12(6)

Keyword:

Priority - same invention (no)

Inventive step - main request (no) - auxiliary requests I and IV (no)

Late-filed request - admitted in first-instance proceedings (no)

Amendments - extension beyond the content of the application as filed (yes) - intermediate generalisation

Decisions cited:

G 0002/98, G 0002/10, G 0007/93

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 1133/24 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 March 2026

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
1 July 2024 concerning maintenance of the
European Patent No. 3552947 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
 O. Loizou

Summary of Facts and Submissions

- I. The patent proprietor and opponent 1 filed an appeal against the Opposition Division's decision that the patent, as amended according to the auxiliary request VIII (claim set filed on 21 March 2024) during the oral proceedings, met the requirements of the EPC.
- II. The following documents are relevant for the present decision:
- D1:** CN 201810316266; and
D1b: English translation of D1.
D2: CN 208484799 U;
D2b: English translation of D2; and
D35: DE 202017107824 U1.
- III. Among other things, the Opposition Division concluded that the subject-matter of claim 1 of auxiliary request VI did not involve an inventive step in view of document D2, taking into account the common general knowledge of the skilled person and the invalidity of the claimed priority. The Division also did not admit auxiliary request Ia into the proceedings and held that the subject-matter of claim 1 of auxiliary requests II, IVa, IVb, V and VII extended beyond the content of the application as originally filed.
- IV. In its communication pursuant to Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal), dated 2 January 2026, and in preparation for the oral proceedings set for 11 March 2026, the Board expressed its preliminary opinion on the case, stating that the conclusions of the Opposition Division in its decision

seemed correct. The Board also indicated that both appeals were likely to be dismissed.

- V. In a letter dated 26 January 2026, the appellant (opponent 1) withdrew their appeal.
- VI. In letters dated 5 November 2025 and 23 February 2026, the respondents (opponents 2 and 1 respectively) informed the Board that they would not be attending the scheduled oral proceedings.
- VII. Oral proceedings before the Board were held on 10 March 2026. The appellant was present, but none of the respondents attended as announced.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or in the alternative, that the patent be maintained in amended form on the basis of one of the auxiliary requests I, Ia, II, IVa underlying the decision under appeal, or auxiliary request IVa sub. filed during the oral proceedings or one of auxiliary requests IVb, V, VI, VII and VIII underlying the decision under appeal.

The respondent (opponent 1) requested in writing that the appeal of the patent proprietor be dismissed.

The respondent (opponent 2) did not make any substantive submissions in the appeal proceedings.

- VIII. Claim 1 of the main request (i.e. as granted) reads as follows (feature numbering according to the contested decision):

1.1 *A propelling module, comprising:*

- 1.2 a module housing (1),
- 1.3 a rotating device (2),
- 1.4 a transmission shaft (3) and
- 1.5 a propeller (4);
- 1.6 wherein the module housing (1) is provided with a sealed chamber (11),
- 1.7 the propeller (4) is arranged outside the sealed chamber (11),
- 1.8 the rotating device (2) is arranged inside the sealed chamber (11),
- 1.9 one end of the transmission shaft (3) is connected to the rotating device (2),
- 1.10 the other end of the transmission shaft (3) penetrates through a side wall of the sealed chamber (11) and extends to the exterior of the sealed chamber (11),
- 1.11 and the other end of the transmission shaft (3) is connected to the propeller (4);
- 1.12 the module housing (1) is provided with a power connection member (12),
- 1.13 the rotating device (2) is electrically connected to the power connection member (12), and
- 1.14 the rotating device (2) is configured to be electrically connected to an external battery module (30) via the power connection member (12);
- 1.15 two ends of the module housing (1) are respectively provided with a storage end (141) and a tail end (142),
- 1.16 the sealed chamber (11) is arranged at the storage end (141),
- 1.17 the module housing (1) is further provided with a water passage (143),
- 1.18 wherein the water passage (143) penetrates through from a bottom surface of the tail end (142) to a side surface of the tail end (142), and
- 1.19 the propeller (4) is arranged in the water passage (143);
- 1.20 wherein the rotating device (2) comprises a control

assembly (21) and a motor (22); and

- 1.21 wherein the control assembly (21) comprises a brushless motor controller,
- 1.22 an input of the brushless motor controller is electrically connected to the power connection member (12),
- 1.23 an output of the brushless motor controller is electrically connected to the motor (22), and
- 1.24 the transmission shaft (3) is connected to a rotor of the motor (22).

Claim 1 of auxiliary request I differs from granted claim 1 in that feature 1.1 reads as follows (differences underlined):

- 1.1 A propelling module suitable for being detachably connected to a surfboard (20), comprising:

Claim 1 of auxiliary request Ia differs from claim 1 of auxiliary request I in that feature 1.15 reads as follows (differences underlined):

- 1.15 two ends of the module housing (1) are respectively provided with a storage end (141) and a tail end (142), wherein the storage end (141) is provided as a separate member from the tail end (142),

Claim 1 of auxiliary request II differs from claim 1 of auxiliary request I in that feature 1.17 reads as follows (differences underlined):

- 1.17 the module housing (1) is further provided with a water passage (143), wherein an exterior wall of the module housing (1) forms the water passage (143),

Claim 1 of auxiliary request IVa differs from claim 1 of auxiliary request I in that feature 1.17 reads as follows (differences underlined):

1.17 *the module housing (1) is further provided with a water passage (143), wherein an exterior wall of the module housing (1) forming the water passage (143) is provided as a separate member from the side wall of the sealed chamber (11),*

Claim 1 of auxiliary request IVa sub. differs from claim 1 of auxiliary request IVa in that feature 1.17 reads as follows (differences underlined):

1.17 *the module housing (1) is further provided with a water passage (143), wherein an exterior wall of the module housing (1) forming the water passage (143) at the tail end (142) is provided as a separate member from the side wall of the sealed chamber (11),*

Claim 1 of auxiliary request IVb differs from claim 1 of auxiliary request I in that feature 1.17 reads as follows (differences underlined):

1.17 *the module housing (1) is further provided with a water passage (143), wherein an exterior wall of the module housing (1) forming the water passage (143) on its inside is provided as a separate member from the side wall of the sealed chamber (11),*

Claim 1 of auxiliary request V differs from claim 1 of auxiliary request IVb in that feature 1.24 reads as follows (differences underlined):

1.24 *the transmission shaft (3) is connected to a rotor of*

the motor (22), wherein the rotor, the transmission shaft (3), and the propeller (4) have a common rotation axial line.

Claim 1 of auxiliary request VI differs from claim 1 of auxiliary request I in that it further includes the features of granted claim 6:

- 6.1 *wherein the control assembly (21) is connected to a top portion of the sealed chamber (11), and*
- 6.2 *the control assembly (21) is arranged above the transmission shaft (3).*

Claim 1 of auxiliary request VII differs from claim 1 of auxiliary request IVb in that it further includes the features of granted claim 6:

- 6.1 *wherein the control assembly (21) is connected to a top portion of the sealed chamber (11), and*
- 6.2 *the control assembly (21) is arranged above the transmission shaft (3).*

Reasons for the Decision

- 1. *Priority - effective date of claim 1 of all requests*
 - 1.1 The priority of document D1 (see also D1a) is not validly claimed for the subject-matter of claim 1 of any of the appellant's requests (Article 87(1) EPC). Consequently, D2 (published on 12 February 2019) represents state of the art under Article 54(2) EPC because the effective date for the subject-matter of

claim 1 under Article 89 EPC is the filing date of the application, 10 April 2019.

- 1.2 The Opposition Division held that the priority was not validly claimed since a brushless motor controller was not directly and unambiguously disclosed in D1 (see point 2 of the decision under appeal).
- 1.3 It is established case law of the Boards of Appeal that the criterion for assessing whether the requirement of the "same invention" referred to in Article 87(1) EPC is met is the gold standard, namely, whether the claimed subject-matter derives directly and unambiguously either explicitly or implicitly and using common general knowledge from the previous application as a whole (see G 2/98 headnote and G 2/10 points 4.3 and 4.6).
- 1.4 The appellant's arguments were essentially the same as those presented to the Opposition Division, and no new arguments were put forward that had not already been considered in the Opposition Division's decision.

Since the Board agrees with the Opposition Division's reasoning, it adopts it as its own. In particular, the above criterion is not met because priority document D1 does not specify the type of electric motor or controller used. Consequently, there is no direct and unambiguous disclosure of a brushless motor. It should be noted that, in this respect, figures in a patent are normally schematic, whereby technical information not clearly and unambiguously derivable from the figures (i.e. the type of electric motor in the present case) would have to be backed up by corresponding passages in the description (and, in the present case, nothing is said about a brushless motor).

2. *Main request, auxiliary requests I and VI - inventive step*

2.1 The subject-matter of claim 1 of the main request and of the auxiliary requests I and VI does not involve an inventive step in view of D2 in combination with common general knowledge of the skilled person (Article 56 EPC).

As the subject matter of claim 1 of the main and auxiliary requests I is broader than that of auxiliary request VI, the reasoning below, which relates to claim 1 of auxiliary request VI, also applies to claims 1 of the main and auxiliary requests I.

2.2 The Opposition Division is correct in concluding that the subject-matter of claim 1 differs from the propelling unit 40 of D2 only in features relating to a brushless motor. The type of electric motor, and consequently its controller, is not specified in D2.

2.3 The appellant contested these conclusions and argued that the subject-matter of claim 1 also differed from the propelling unit of D2 in features 1.2, 1.4, 1.6 to 1.14, 1.16, 1.24, 6.1 and 6.2. D2 would not disclose direct and unambiguous information about the propulsion module 40. While it is agreed with the general observation that patent figures are schematic and do not constitute precise technical drawings, they emphasised that in the specific case of D2 the expert is confronted with fundamental inconsistencies which precluded any such direct and unambiguous conclusion. In particular, figure 2 of D2 depicted a propulsion module 40 whose outer shape and internal structure differed markedly from those shown in figures 4 and 5,

making it impermissible to selectively combine features from these fundamentally different depictions. Moreover, figure 2 omitted the mandatory signal receiver 60 required by claim 1 of D2 and provided no space for its placement, thereby directly contradicting the core teaching of the document. Figures 4 and 5, in turn, were inconsistent both with figure 2 and with D2's own claims: they failed to show the cylindrical power plug 84 required by claim 7 and did not depict the mounting seat of the battery module protruding inward from the inner wall of the propulsion module as required by claim 3, which would necessitate a closed housing at the position of the signal receiver. In view of these severe contradictions between the figures themselves and between the figures and the claims and description, the appellant concluded that D2 failed also to provide a direct and unambiguous disclosure of the above mentioned features of claim 1 of Auxiliary Request VI. The same reasoning applied, *mutatis mutandis*, to claim 1 of the granted patent and of Auxiliary Request I.

2.4 However, the Board judges that such inconsistencies and contradictions are not present in D2 when read by the skilled person. Figures 1 to 5 of D2, which as in any patent document are schematic, have to be taken in combination with their description and under consideration of the skilled reader's technical understanding. Said figures disclose a preferred embodiment of the invention of D2 (see paragraph [0051] ff. of D2b). The propulsion module of D2 is a jet type one and it comprises electric wiring, a governor and an electric motor within the module 40. Its disclosed waterproof performance implies that this part of the module at least must be watertight (see points 11.2.2 to 11.2.12 of the decision under appeal). Further, the

disclosure of D2 is centred on the data transmission - not electrical power transmission - from the battery module to the propulsion module. Figure 2 is an exploded schematic view of the surfboard in which all the details need not be specified, in particular the structure and parts of the power plug, power jack, transmitter and receiver, but gives the skilled person an understanding of the invention as disclosed in its description. The power connection is located where the plug 84 is referenced in figure 2, since it has to be aligned with the through hole for connecting with power battery module and propulsion module (see paragraph [0069] and dotted lines of figure 2 of D2b). The transmitter and receiver, although not shown in figure 2 are later specified in figures 4 and 5 as to one of their possible locations close to the power jack and plug (see also paragraph [0069]).

The fact that the power plug, which is not referenced in figure 5, does not appear to have the same shape as in figure 2 and that also the corresponding socket in figure 5 is not shown, is irrelevant for its disclosure because the description directly and unambiguously specifies their location within the module and does not deepen the specific structure of the plug and socket power connection. The plug and socket are directly and unambiguously to be connected through the through hole 23 which corresponds to the location at the rear of the battery module and the front of the propulsion unit.

Regarding the alleged contradiction between claims 3 and 7 and the embodiment of figures 1 to 5 of D2 it has to be pointed out that dependent claims delimit particular embodiments of the invention. Accordingly, it is irrelevant whether the embodiment of figures 1 to 5 falls under the subject-matter of these claims since

it clearly falls under the subject-matter of claim 1 of D2.

- 2.5 It was not disputed that D2 does not specify the type of electric motor used in the propulsion module. The Opposition Division is correct in defining the objective technical problem as filling the gap, i.e. determining which type of electric motor the skilled person would use for propulsion module 40.
- 2.6 Out of this differentiating feature, the appellant did not contest the formulation of the objective technical problem.
- 2.7 Bearing in mind that this kind of electric motors is well established for electric propelled surfboards, a brushless motor represents an obvious possibility for the skilled person. As the Opposition Division concluded, features 1.22 and 1.23 are a direct consequence of choosing a brushless motor.
- 2.8 The appellant additionally argued during the oral proceedings that when trying to solve the posed objective technical problem, the skilled person had to change the motor and controller of D2 and consequently the arrangement need not be as shown in figure 4. For reasons of heat and as commonly the controller was integrated in the motor, it was not possible to conclude in an obvious manner that, when making the change the arrangement regarding location of the components would be kept.

The Board however judges that there is nothing that would prompt the skilled person against using the layout for the controller and motor shown in figure 4 of D2 when considering the use of a brushless motor.

Furthermore, the question at hand is not a change of the motor or controller of D2 but merely a specification of the type of electric motor that the skilled person would use for the propulsion unit of D2, and a consequently of the controller as well.

3. *Auxiliary requests Ia - admissibility*

3.1 The Board did not admit auxiliary request Ia into the appeal proceedings under Article 12(6) RPBA.

3.2 The auxiliary request Ia corresponds to the auxiliary request Ia underlying the decision under appeal. The Opposition Division did not admit the request exercising its discretion under under Rule 116 and Article 114(2) EPC because the request, which was filed one day before the oral proceedings, was not clearly allowable in view of a *prima facie* lack of compliance with Article 123(2) EPC.

3.3 Under Article 12(6) RPBA the Board shall not admit requests which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance. Furthermore, a Board of Appeal should only overrule the way in which a first instance department has exercised its discretion if it comes to the conclusion either that the first instance department in its decision has not exercised its discretion in accordance with the right principles, or that it has exercised its discretion in an unreasonable way, and has thus exceeded the proper limits of its discretion (see G 7/93, point 2.6).

3.4 The appellant argued that Auxiliary Request Ia should be admitted into the proceedings. The request was filed in direct reaction to the introduction of document D35 by Opponent 1 on 30 April 2024, i.e. more than one month after the date referred to in Rule 116(1) EPC, and was accompanied by detailed submissions both on the reaction to D35 and on compliance with Article 123(2) EPC. The Opposition Division violated the principle of fair and equal treatment of the parties by admitting further prior art from the opponent long after the Rule 116(1) EPC deadline while classifying the patent proprietor's timely reaction thereto as "late-filed", particularly since the opponent subsequently relied on the combination of D2 and D35 against Auxiliary Request Ia. Furthermore, the Opposition Division failed to apply a uniform concept of disclosure as required by G 2/10: while it readily accepted features from contradictory figures in D2 and D19 for novelty purposes, it applied an unreasonably strict and inconsistent standard to the patent proprietor's amendment, incorrectly interpreting the clear, technically unambiguous hatching change in Figure 4 of the patent (indicating two adjacent separate components - the storage end 141 forming the sealed chamber and the tail end 142 with the water passage - in accordance with ISO 128-50 and DIN standards) as lacking basis. In view of these circumstances the Opposition Division exercised its discretion in an unreasonable manner, and Auxiliary Request Ia had therefore to be admitted.

3.5 This is not persuasive for the following reasons:

Firstly, even if document D35 was lately filed by the opponent 1 during the opposition proceedings, this piece of evidence was never admitted by the Opposition Division. Furthermore, D35 had no bearing on the

decision under appeal and consequently the auxiliary request Ia cannot be considered to be a reaction to the filing of D35. This was already pointed out by the Opposition Division in its decision (see point 5.1.1). The previous auxiliary request I was not allowable in view of an objection already considered in the Opposition Division's summons to oral proceedings.

Therefore, the Opposition Division's exercise of discretion for the admissibility of auxiliary request Ia filed one day previous to the oral proceedings underlay the principle of clear allowability.

Since the feature added was derived solely from figure 4 of the application as originally filed, the Opposition Division considered that the request was not clearly allowable since a lack of compliance with Article 123(2) EPC appeared to be present.

The argument regarding the alleged failure to apply a uniform concept of disclosure is irrelevant for deciding whether the Opposition Division's use of discretion suffered from an error, since the Opposition Division did not decide on the requirements of Article 123(2) EPC for the auxiliary request Ia but on its admissibility. It merely gave an opinion on Article 123(2) EPC on which it based its non clear allowability of the request, i.e. a discussion as to the requirements of Article 123(2) EPC should have taken place in case the request would have been admitted, but it did not. Only a *prima facie* discussion on the requirements of Article 123(2) EPC took place (see minutes of oral proceedings point 3).

The Opposition Division applied therefore the right principle when exercising its discretion, and did so in a reasonable way.

4. *Auxiliary request II - inadmissible extension*

4.1 The subject-matter of claim 1 extends beyond the content of the application as originally filed (Article 123(2) EPC).

4.2 Auxiliary request II corresponds to auxiliary request II underlying the decision under appeal.

Claim 1 is based on claims 1 and 4, as well as paragraphs [0014] and [0038], and figure 4 of the application as originally filed (see the A publication of the application). In particular, the basis for the amended feature 1.17 is figure 4 of the application as originally filed. The appellant shared this view.

4.3 Accordingly, the appellant agrees with the finding of the Opposition Division in the contested decision that the subject-matter of granted claim 1 is based on the originally filed claims 1 and 4, incorporating features from the disclosure of the preferred embodiment presented in figure 4 and the corresponding passages in the description.

Therefore, it must be determined whether the subject-matter of claim 1 generalises the disclosure of this invention's preferred embodiment as originally filed. In other words, whether the subject-matter of claim 1 represents an unallowable intermediate generalisation of that embodiment's disclosure (see Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.E. 1.9.)

4.4 The Opposition Division concluded that it derived directly and unambiguously from figure 4, that the wall

of the water passage was formed in its downstream part by the interior of the wall of the housing at the tail end (the tube-like lower housing 14), and in its upstream part by the side wall of the sealed chamber at the storage end (see point 6.2 of the decision under appeal).

- 4.5 In the appellant's view, the Opposition Division's reasoning above was to be set aside since feature 1.17 did not require that the whole water passage to be exclusively formed by the exterior wall of the housing. The appellant interpreted the 'interior wall' specified by the Opposition Division as an 'exterior wall' since it represented the most outside wall of the housing and considered the wall of the housing forming the tube-like lower housing as the exterior wall. The appellant stressed that the subject-matter resulting from features 1.17 and 1.18 merely specified that a part of the water passage was at the tail end. This derived directly and unambiguously for the skilled person from figure 4 of the application as originally filed.
- 4.6 However, even if feature 1.17 were to be interpreted as not requiring the entire water passage to be formed exclusively by the 'exterior' wall of the housing, and even if it were to be accepted that the appellant's interpretation that features 1.17 and 1.18 imply the definition of the water passage only at the tail end, the amended claim 1 now specifies the actual composition of the water passage, i.e. formed by an exterior wall of the module housing at the tail end. According to the application as originally filed, and as the appellant conceded (see page 61 of the statement of grounds of appeal), the water passage is not only partly formed by the 'exterior' wall at the tail end of

the housing but also partly by a side wall of the sealed chamber at the storage end of the housing. This was correctly identified by the Opposition Division (see points 6.2 and 8.1 of the decision under appeal).

This feature has been omitted and is disclosed in combination with the 'exterior' wall at the tail end of the propelling module shown in figure 4, forming the water passage of the jet-like propelling module in a functional and structural relationship.

The Board also notes that, according to established case law of the Boards of Appeal, the criterion for assessing compliance with the requirements of Article 123(2) EPC is the "gold standard", i.e. whether the claimed subject-matter is directly and unambiguously derivable by the skilled person from the application as originally filed (see e.g. points 4.3 and 4.6 in the Decision of the Enlarged Board of Appeal G 2/10, OJ EPO 2012, 376). A feature from a preferred embodiment may only be singled out where it is evident that it is not inextricably linked to other non-optional features in the context of the disclosure. Due to the both structural and functional relationship referred to above, this exception is not given in the current case.

4.7 Consequently, an unallowable intermediate generalisation is present.

5. As claim 1 of auxiliary requests IVa, IVa sub., IVb, V and VII includes the additional feature of an exterior wall forming the water passage, taken from the disclosure of the preferred embodiment of figure 4, but not the aforementioned feature of the side wall of the sealed chamber also forming the water passage, the same reasons presented above for claim 1 of auxiliary request II apply to these requests. Therefore, the

subject-matter of claim 1 of auxiliary requests IVa, IVa sub., IVb, V and VII extends beyond the content of the application as originally filed (Article 123(2) EPC).

6. It follows that the appeal of the patent proprietor is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

G. Pricolo

Decision electronically authenticated