

REVISED VERSION

(19) World Intellectual Property Organization
International Bureau



(43) International Publication Date
8 October 2009 (08.10.2009)

PCT

(10) International Publication Number
WO 2009/121628 A9

- (51) **International Patent Classification:**
G01N 21/88 (2006.01) *G01N 21/95* (2006.01)
G01N 21/94 (2006.01) *G01N 21/956* (2006.01)
- (21) **International Application Number:**
PCT/EP2009/002482
- (22) **International Filing Date:**
3 April 2009 (03.04.2009)
- (25) **Filing Language:** English
- (26) **Publication Language:** English
- (30) **Priority Data:**
61/064,949 4 April 2008 (04.04.2008) US
- (71) **Applicant (for all designated States except US):** **NANDA TECHNOLOGIES GMBH** [DE/DE]; Lise-Meitner-Strasse 3, 85716 Unterschleissheim (DE).
- (72) **Inventors; and**
- (75) **Inventors/Applicants (for US only):** **MARKWORT, Lars** [DE/DE]; Dachauer Strasse 59d, 85778 Haimhausen (DE). **CHHIBBER, Rajeshwar** [US/US]; 4929 Cruden Bay Court, San Jose, CA 95138 (US). **ECKERL, Klaus** [DE/DE]; Industriestraße 6, 94116 Hutthurm (DE). **HARENDT, Norbert** [DE/DE]; Industriestraße 6, 94116 Hutthurm (DE).
- (74) **Agent:** **DIEHL & PARTNER GBR**; Augustenstrasse 46, 80333 München (DE).
- (81) **Designated States (unless otherwise indicated, for every kind of national protection available):** AE, AG, AL, AM, AO, AT, AU, AZ, BA, BB, BG, BH, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DO, DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, GT, HN, HR, HU, ID, IL, IN, IS, JP, KE, KG, KM, KN, KP, KR, KZ, LA, LC, LK, LR, LS, LT, LU, LY, MA, MD, ME, MG, MK, MN, MW, MX, MY, MZ, NA, NG, NI, NO, NZ, OM, PG, PH, PL, PT, RO, RS, RU, SC, SD, SE, SG, SK, SL, SM, ST, SV, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, ZA, ZM, ZW.
- (84) **Designated States (unless otherwise indicated, for every kind of regional protection available):** ARIPO (BW, GH, GM, KE, LS, MW, MZ, NA, SD, SL, SZ, TZ, UG, ZM, ZW), Eurasian (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM), European (AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, SE, SI, SK, TR), OAPI (BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, ML, MR, NE, SN, TD, TG).
- Published:**
— with declaration under Article 17(2)(a); without abstract; title not checked by the International Searching Authority
- (48) **Date of publication of this revised version:**
26 November 2009
- (15) **Information about Correction:**
see Notice of 26 November 2009



WO 2009/121628 A9

(54) **Title:** OPTICAL INSPECTION SYSTEM AND METHOD

(57) **Abstract:**

PATENT COOPERATION TREATY

PCT

DECLARATION OF NON-ESTABLISHMENT OF INTERNATIONAL SEARCH REPORT

(PCT Article 17(2)(a), Rules 13ter.1(c) and Rule 39)

Applicant's or agent's file reference N10542 - PCT	IMPORTANT DECLARATION	Date of mailing(day/month/year) 05/10/2009
International application No. PCT/EP2009/002482	International filing date(day/month/year) 03/04/2009	(Earliest) Priority date(day/month/year) 04/04/2008
International Patent Classification (IPC) or both national classification and IPC G01N21/88, G01N21/94, G01N21/95, G01N21/956		
Applicant NANDA TECHNOLOGIES GMBH		

This International Searching Authority hereby declares, according to Article 17(2)(a), that **no international search report will be established** on the international application for the reasons indicated below

1. The subject matter of the international application relates to:

- a. scientific theories
- b. mathematical theories
- c. plant varieties
- d. animal varieties
- e. essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes
- f. schemes, rules or methods of doing business
- g. schemes, rules or methods of performing purely mental acts
- h. schemes, rules or methods of playing games
- i. methods for treatment of the human body by surgery or therapy
- j. methods for treatment of the animal body by surgery or therapy
- k. diagnostic methods practised on the human or animal body
- l. mere presentations of information
- m. computer programs for which this International Searching Authority is not equipped to search prior art

2. The failure of the following parts of the international application to comply with prescribed requirements prevents a meaningful search from being carried out:


the description the claims the drawings

3. A meaningful search could not be carried out without the sequence listing; the applicant did not, within the prescribed time limit:

- furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
- furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
- pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rule 13ter.1(a) or (b).

4. A meaningful search could not be carried out without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

5. Further comments:

Name and mailing address of the International Searching Authority  European Patent Office, P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk Tel. (+31-70) 340-2040, Tx. 31 651 epo nl, Fax: (+31-70) 340-3016	Authorized officer Ka-Bo Müller
--	--

FURTHER INFORMATION CONTINUED FROM PCT/ISA/ 203

The present application contains 49 claims, of which 12 are independent. There is no clear distinction between the independent claims because of overlapping scope. There are so many claims, and they are drafted in such a way that the claims as a whole are not in compliance with the provisions of clarity and conciseness of Article 6 PCT, as it is particularly burdensome for a skilled person to establish the subject-matter for which protection is sought.

The reasons are as follows:-

From the twelve different definitions of the claimed invention according to the above claims all that can be deduced is that the subject-matter concerns an optical inspection system or method using such a system, The different systems defined comprise of a multitude of possible permutations of sets of particular optical components which sets are different between the different independent claims both in their composition and in the arrangement of the optical components without any clear definition of the invention amongst the separate subject-matters. In addition the individual definitions of every one of the independent claims seeks to define the invention effectively by achievement of a desired numerical range of a specific optical parameter of the inspection system whereby the significance of the restriction of the parameter to such a range in terms of the arrangement of optical components in the system would not be apparent to the skilled person without undue burden.

In addition, the numerical ranges of specific optical parameters in the inspection systems do not appear to achieve any particular special technical effect so that the skilled person would not be able to appreciate what alleged inventive concept lay behind any of the individual definitions using such ranges and would be even more unclear when confronted with twelve such nebulous definitions in the twelve independent claims presently on file. Further, because the definition of the numerical and geometric features in each individual independent claim are very vague it is unduly burdensome to attempt to assess whether any particular disclosure of an inspection system in the prior art falls within the scope of such a claim. This problem is compounded twelve fold in view of such vague definitions in not just a single independent claim but twelve independent claims.

In view of the above there is no consistent indication, even from the excessive number of independent claims, of any technical effect in which the purported invention is considered to lie. The subject matter of the claimed inventions are therefore unclear individually, even more so when considered as a whole and in addition lack conciseness since they comprise pluralities of claims containing partially overlapping wording.

The non-compliance with the substantive provisions is to such an extent that a meaningful search of the whole claimed subject-matter could not be carried out (Article 17(2) PCT and PCT Guidelines 9.30). There being no reasonable basis in the application that clearly indicates the subject-matter which might be expected to form the subject of the claims later in the procedure, no search at all was deemed possible.

In this respect, recourse to the description in so far as it appears to concern the purported invention on page 3, line 15 - page 12, line 22

FURTHER INFORMATION CONTINUED FROM PCT/ISA/ 203

also does not provide any further clarification of what the applicants consider to be the invention since this disclosure essentially comprises a repetition of "embodiments" corresponding to the appended claims. Further confusion arises because it is not apparent what technical effects even the purported "examples" of the invention on pages 14-33 with reference to Figs. 3-13 are intended to demonstrate. All that is apparent at present is that these examples demonstrate the use of specific inspection systems having sets of components as in the individual independent claims arranged so that the desired specific numerical optical parameters fall within the specified ranges as in the claims without indicating what special technical effect the selection of these specific values / ranges leads to. The description both in its general introductory portion and in its specific embodiments therefore merely repeats the unclear definition of subject-matter resulting from the multitude of independent claims and does not provide any further clear indication which would allow a well defined expected fall back position to be determined.

The applicant's attention is drawn to the fact that claims relating to inventions in respect of which no international search report has been established need not be the subject of an international preliminary examination (Rule 66.1(e) PCT). The applicant is advised that the EPO policy when acting as an International Preliminary Examining Authority is normally not to carry out a preliminary examination on matter which has not been searched. This is the case irrespective of whether or not the claims are amended following receipt of the search report or during any Chapter II procedure. If the application proceeds into the regional phase before the EPO, the applicant is reminded that a search may be carried out during examination before the EPO (see EPO Guideline C-VI, 8.2), should the problems which led to the Article 17(2) declaration be overcome.