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D E C I S I O N
of 1 July 2003

Case Number: T 1079/01 - 3.3.7

Application Number: 96901805.0

Publication Number: 0789106

IPC: D06P 5/00

Language of the proceedings: EN

Title of invention:

Process for textile printing with laser copies of normal photocopying paper using a spray textile fixing base

Applicant:

Baggen, Maria Josefina Herminia, et al

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 84

Keyword:

"Claims - clarity (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 1079/01 - 3.3.7

D E C I S I O N
of the Technical Board of Appeal 3.3.7
of 1 July 2003

Appellant: Baggen, Maria Josefina Herminia and
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 29 March 2001
refusing European patent application
No. 96901805.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. E. Teschemacher
Members: G. Santavicca
P. A. Gryczka

Summary of Facts and Submissions

- I. European patent application 96 901 805.0 was filed as international patent application ES96/00023 on 7 February 1996, claiming a priority in Spain of 13 February 1995 (ES 9500281), and published on 22 August 1996 under the No. WO 96/25550.

The application as originally filed comprised 2 claims, reading as follows:

"1. Procedure for the stamping of textiles with laser copies on normal copier paper using a spray based textile fixing base, essentially characterized for using a fluid spraying textile fixing base, as well as normal photocopier paper, in a laser photocopier, in which a paper copy is first obtained (1) upon which is extended, using a spray, a textile fixing base (2) that absorbs the toner, being this copy (1) later placed upon any kind of light colored fabric (4), proceeding then to stamp the drawing (3) or the signs or marks upon the fabric (4) through the use of a, manual, pneumatic o hydraulic clothes iron (5), heated up to a temperature of approximately 200 °C, transferring then the toner absorbed by the spray to the textile, penetrating into it deeply into the fabric, reason for which it shall offer a high level of resistance to successive washing, as a function of the resistance to washing of the own fixer fluid, being then withdrawn the copy paper (1) previously placed upon the fabric (4)."

"2. Procedure for the stamping of textiles with laser copies on normal copier paper using a spray based textile fixing base."

II. By a decision of the Examining Division, posted on 29 March 2001, the above application was refused.

That decision was based on the amended claim and description filed with letter dated 16 May 2000, Claim 1 reading as follows:

"1. Procedure for the stamping of textiles with laser copies on normal copier paper which comprises the steps of vaporising a solvent mixture upon a normal photocopier paper, placing the impregnated paper in contact with textile and applying hot iron under pressure to transfer the drawings upon the textile, characterized in that the solvent used is a textile fixing base, the drawing to transfer can be obtained in a laser photocopier, and for stamping the drawing is used a pneumatic or hydraulics clothes iron, heated up to a temperature of 200°C, transferring them the toner absorbed by the spray to the textile penetrating into it deeply into the fabric, reason for which it shall offer a high level of resistance to successive washing."

III. Having regard to the requirements of Article 84 EPC, the Examining Division held that:

(1) Beyond the term "textile fixing base" in Claim 1, certain information on the compounds concerned was available from their functions indicated in the description. Their use had been acknowledged as

being "ingenious". Therefore, that term was ambiguous to the skilled person, who, in the present case, was a practitioner being familiar with image transfer from paper copies to textiles by fluid-based stamping, not with the chemistry of the fluid base however.

- (2) Since Claim 1, in view of that ambiguous term, did not contain all of the essential features of the invention, its scope was not clear either.
- (3) The compositions provided by the applicants as further information on the nature of the textile fixing base had not been disclosed initially and could not be used to interpret the claims. The fact that this information was successful in overcoming certain objections during the US examination procedure was irrelevant to the proceedings before the EPO.
- (4) Therefore, the present application had to be refused.

IV. The applicants lodged an appeal against that decision, received on 24 May 2001, and paid the prescribed fee on 28 May 2001. In their statement of grounds of appeal, received on 19 July 2001, the appellants enclosed a new Claim 1, as the sole request, an amended description and copies of the abstracts of further documents (D8 (US-A-5 948 586), D9 (EP-A-0 754 798) and D10 (WO-A-89/02835)).

New Claim 1 reads as follows:

"1. Procedure for the stamping of textiles with laser copies on normal copier paper using transfer fluid, where said procedure comprises the steps of spraying transfer fluid upon a normal photocopier paper, placing the impregnated paper in contact with textile and applying hot iron under pressure to transfer the drawings upon the textile, **characterised** in that the transfer fluid is sprayed, the drawing to be transfer can be obtained in a laser photocopier, for stamping is used a pneumatic or hydraulic clothes iron heated at a temperature of 200°C, transferring then the toner absorbed by the spray to the textile penetrating deeply into the fabric, reason for which it shall offer a high level of resistance."

V. In a communication in preparation for oral proceedings, dated 21 May 2003, the Board detailed the points to be dealt with, *inter alia* in relation to the requirements of Article 84 EPC.

VI. Oral proceedings were held on 1 July 2003, attended by one of the appellants, Mr H. J. Griebel.

During the discussion, the appellant explained the gist of the invention underlying the application in suit and how the invention was to be seen in the light of the prior art acknowledged in the description.

The Board elucidated its objections, doubts and questions, in particular regarding the clarity of the expressions "textile fixing base" and "transfer fluid".

VII. The arguments of the appellants in support of the clarity of the claimed subject-matter can be summarised as follows:

- (1) A great number of patent specifications contained expressions similar to the contested terms "textile fixing base" and "transfer fluid", used for identifying image transfer products, eg D8 to D10.
- (2) The contested term "textile fixing base" was not an essential feature of the invention, indeed it only had been used to identify products for image transfer, which were commercially available. Therefore, that term had been withdrawn from new Claim 1 and the amended description and replaced by the term "transfer fluid".
- (3) The compositions submitted with the reply dated 16 May 2000 had been provided for overcoming the objections in the communication of the Examining Division. Although these compositions could not be used to interpret the claims, they were however known.

VIII. The appellants requested that the decision under appeal be set aside and that a patent be granted on the basis of Claim 1 as filed with letter dated 19 July 2001.

Reasons for the Decision

1. The appeal is admissible.
2. *Clarity*
 - 2.1 The present invention concerns a procedure for the stamping of textiles, in which a particular product, termed "textile fixing base", in the text of the application underlying the decision under appeal, or "transfer fluid", in the text as amended in appeal proceedings, serves, in form of a liquid spray, the purpose of permitting the transfer of an image from a first support (normal photocopier paper) to a second support (a textile) by application of heat and pressure via a pneumatic or hydraulic clothes iron heated at 200°C.
 - 2.2 In Claim 1, the particular product is now identified by the term "transfer fluid", which replaces the contested term "textile fixing base" present in the claims as filed, to overcome the ground of refusal in the impugned decision.
 - 2.3 Hence, the question is whether or not the lack of clarity held to be caused by the presence of the ambiguous feature "textile fixing base" has been overcome by the new term "transfer fluid".
 - 2.4 To answer that question it is necessary to establish whether or not that term, either *per se* or in the light of the description, is unambiguous for a person skilled in the art using common general knowledge (Article 84 EPC).

2.5 As to the clarity of the term *per se*, the term "transfer fluid" encompasses any fluid which transfers something and it has not been shown to be well recognised in the art of textile stamping procedures. Among the cited documents, only D10 mentions a "transfer fluid" in the context of textile stamping procedures. However, in its description, D10 gives the meaning of that term by specifying the composition of such fluids in the given context. Apart from this individual, particular document, the appellants have not shown by any general information source that this term has a well recognised meaning in the art. Therefore, the term "transfer fluid", as well as the term "textile fixing base", are not clear *per se* for the skilled person.

2.5.1 The description of the application in suit gives the following information on the meaning of the terms "textile fixing base" or "transfer fluid":

- it is a chemical product, a liquid spray (page 1, line 14; page 2, line 24; page 3, lines 11 to 12);
- it absorbs the toner on the copy, and the liquid thus impregnated is ready for its transfer ... upon any textile (page 1, lines 18 to 21; page 2, line 31);
- it impregnates paper (page 2, lines 33 to 34);
- it can be transferred, by application of heat and pressure, and penetrates deeply into the fabric to be stamped (page 3, lines 7 and 8);

- its fixing base chemical product has a resistance to washing, which is imparted to the stamped garment (page 3, lines 8 to 12).

2.5.2 On the basis of the above information, it is however not possible to establish which type of chemical compound is suitable for the mentioned purposes, ie what the chemical composition of the "textile fixing base" or "transfer fluid" could be. In other words, it is not possible to establish whether or not a chemical composition falls under the term "textile fixing base" or "transfer fluid". In particular, from the above information, it is not possible to derive the compositions submitted with letter dated 16 May 2000 and included in US patent No. 6 060 120.

2.5.3 The appellants have argued that the compositions falling within the term "textile fixing base" and "transfer fluid" were known and commercially available. However, no evidence therefor has ever been provided.

2.6 Summing up, the terms "transfer fluid" and "textile fixing base" do not have a well recognised meaning in the art and the indications in the description are not sufficient to give a concrete idea as to which individual compound or composition might be covered by them. Therefore, these terms are not clear for the skilled person (Article 84 EPC).

3. From the above, it is apparent that the grounds for refusal of the application have not been overcome by the amendments made.

4. Therefore, the subject-matter as claimed is not clear, as required by Article 84 EPC.
5. Consequently, the grounds for refusal under Article 84 EPC (lack of clarity) do prejudice the further prosecution of the application in suit.
6. In view of the above, the Board need not consider whether or not the amendments in Claim 1, addressed in the communication in preparation of the oral proceedings, fulfil the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

C. Eickhoff

R. Teschemacher