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D E C I S I O N
of 23 March 2006

Case Number: T 0257/05 - 3.2.05

Application Number: 95904283.9

Publication Number: 0738213

IPC: B41J 11/20

Language of the proceedings: EN

Title of invention:
Portable printer and cartridge therefor

Patentee:
KROY, LLC

Opponent:
ESSELTE N.V.

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Extension beyond the content of the application as filed
(yes) "

Decisions cited:
-

Catchword:
-



Case Number: T 0257/05 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 23 March 2006

Appellant:
(Patent Proprietor)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 10 December 2004
revoking European patent No. 0738213 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: W. Moser
Members: W. Zellhuber
P. E. Michel

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking the European patent No. 0 738 213.
- II. An opposition was filed against the patent as a whole and based on Article 100(a) EPC (lack of novelty, Article 54 EPC, and lack of inventive step, Article 56 EPC) and Article 100(c) EPC. The Opposition Division held that the patent in suit did not infringe Article 123(2) EPC, and that the subject-matter of claim 1 of the patent in suit as granted was novel, but did not involve an inventive step.
- III. Oral proceedings were held before the Board of Appeal on 23 March 2006.
- IV. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted.

The respondent (opponent) requested that the appeal be dismissed.

- V. Claim 1 of the patent in suit as granted reads as follows:

"1. A thermal printing device comprising:
a device housing (21),
a cartridge receiving cavity (27)' for receiving a
tape supply cartridge (26),
a replaceable tape supply cartridge (26) in said
cartridge receiving cavity (27),

a platen roller assembly (24) including a platen roller (94), and
a print head (76) movable toward and away from said platen roller (94) relative to said device housing between a print position and a non-print position, respectively,
characterised in that

a platen roller support post (42) is fixed relative to said device housing (21) outside said tape supply cartridge (26) and said platen roller (94) is rotatably mounted to said platen roller support post (42) in a fixed, non-biased position relative to said support post except for such rotational movement, and
said print head (76) is spring biased toward said platen roller (94) when in said print position."

VI. In the written procedure and during oral proceedings, the appellant argued essentially as follows:

The feature of claim 1 of the patent in suit as granted that the platen roller is rotatably mounted to the platen roller support post in a fixed, non-biased position relative to said support post except for such rotational movement was derivable from the disclosure of the application as filed (document D0: WO-A 95/15855).

It was clear from the overall disclosure that document D0 concerned a printer wherein the platen roller was the fixed part, whilst other rollers and the print head were movable and adjustable with respect to the platen roller. Document D0 did not mention any movement of the platen roller other than a rotation about the platen roller support post. There was no indication that any

other movement might be required or even useful. In contrast to this, whenever any movement in addition to a rotation was desired, document D0 explicitly referred to such movement, cf. the references to the floating support of the nip roller and the idler roller on page 9, lines 11 to 15, and the floating movement of the print head on page 8, lines 9 to 12, of document D0.

Moreover, as shown in the drawings of document D0, the platen roller support post 42 was fixed to the housing plate 32, cf. Figure 2, and the platen roller 94 was mounted on the support post 42 without play, cf. Figure 6, and prevented from axial movement by retaining circlips, cf. Figures 3 and 4.

VII. In the written procedure and during oral proceedings, the respondent argued essentially as follows:

According to claim 1 of the patent in suit as granted, the platen roller support post was fixed relative to the device housing, and the platen roller was rotatably mounted on the roller support post. Hence, the additionally recited feature in claim 1 that the rotatable mounting of the platen roller on the platen roller support post was in a fixed, non-biased position relative to the support post was a technical feature over and above the two previously mentioned features.

However, there was no disclosure in document D0 that the platen roller was incapable of moving axially along the support post, nor that the platen roller could not tilt relative to the support post, nor that the platen roller was in a non-biased position.

According to Figures 2 to 6 and the corresponding description of document D0, the platen roller 94 was mounted together with the entire yoke 89 on the support post 42, and placed between the torsion spring housed in the sleeve 97 and the upper yoke end portion 98. Document D0 was silent about the distance between that torsion spring and the upper yoke end portion 98. Accordingly, either the platen roller was in contact with that torsion spring and the upper yoke end portion 98, so that the platen roller was in a biased position, or it was not in contact with these two parts, so that it was axially movable. Consequently, the platen roller could not be in a fixed and, at the same time, non-biased position. The circlips depicted in Figures 3 and 4 were provided above the upper yoke end portion and thus could not prevent the platen roller from being axially movable between the torsion spring housed in the sleeve 97 and the upper yoke end portion 98.

Figure 6 was a schematic drawing. It thus was not derivable from the drawing that there was no gap between the platen roller and the support post, and, consequently, that the platen roller could not tilt relative to the support post.

The subject-matter of claim 1 of the patent in suit thus extended beyond the content of document D0, i.e. the application as filed (published version).

Reasons for the Decision

Extension (Article 123(2) EPC)

1. According to page 3, lines 5 to 8 of document D0, the "print module of the present invention includes an improved platen roller assembly in which the platen roller ... is mounted for rotating on a platen roller support post fixed relative to the machine housing." This aspect is described in more detail on page 9, lines 15 to 19 of document D0 with reference to the drawings as follows: "The entire yoke 89 and the supported tape advancement roller 92 together with the platen roller 94 are rotatably mounted on the platen roller support post 42. The post 42 in turn is fixed to the plate 32. Thus, the platen roller 94 is rotatably mounted relative to the support post 42 which in turn is fixed relating to the printer housing."

Claim 1 of the patent in suit as granted specifies that "said platen roller (94) is rotatably mounted to said platen roller support post (42) in a fixed, non-biased position relative to said support post except for such rotational movement".

Consequently, claim 1 explicitly excludes any movement of the platen roller relative to the support post other than rotational movement. Thus, in order to meet the requirements of Article 123(2) EPC, there must be an adequate disclosure of that exclusion in the application as filed.

2. Admittedly, document D0 only refers to a rotatable mounting of the platen roller on the platen roller support post. However, in the Board's view, the fact

that document D0 is silent about any other movement of the platen roller, cannot be construed as meaning that the platen roller is not capable of carrying out any further movements, for example, a linear movement in an axial direction along the support post.

Furthermore, document D0 concerns a printing device wherein, with respect to the device housing, the platen roller support post is the "fixed" part and the printing head the "movable" part, cf. page 3, lines 5 to 16. However, this concerns the relationship between the platen roller support post and the print head, whereas the respective feature in claim 1 of the patent in suit as granted specifically defines the relationship between the platen roller and the platen roller support post.

It further is not directly and unambiguously derivable from the embodiment shown in the drawings that the movements of the platen roller are restricted to a rotational movement. In particular, in Figures 3, 4, and 6, the platen roller assembly is shown from the top with the viewing direction parallel to the axial direction of the support post. It thus is not derivable from these drawings whether or not the platen roller is movable in that axial direction. Figure 2 is an exploded view of the print module showing the platen roller 94 and the platen roller support post 42 separated from each other. Hence, also from that drawing it is not derivable that the platen roller is not movable in the axial direction.

3. Consequently, there is no disclosure in document D0 that the platen roller is rotatably mounted to said platen roller support post in a fixed position relative to said support post **except for such rotational movement.**

4. The subject-matter of claim 1 of the patent in suit as granted thus extends beyond the content of the application as filed (published version), i.e. document D0, contrary to the requirements of Article 123(2) EPC, so that the ground of opposition under Article 100(c) EPC prejudices the maintenance of the patent in suit as granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Dainese

W. Moser