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**Datasheet for the decision
of 16 January 2009**

Case Number: T 1039/06 - 3.2.05

Application Number: 99919640.5

Publication Number: 0997297

IPC: B41J 2/175

Language of the proceedings: EN

Title of invention:

Ink-jet recorder and ink cartridge

Patentee:

Seiko Epson Corporation

Opponent:

Pelikan Hardcopy (International) AG

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 13

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter (yes - main request and auxiliary requests 1, 1a-1c, 2, 2a-2c and 3)"
"Admissibility of auxiliary requests 1d and 2d (no)"

Decisions cited:

T 0169/83

Catchword:

-



Case Number: T 1039/06 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 16 January 2009

Appellant I:
(Patent Proprietor)

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Appellant II:
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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 May 2006 concerning maintenance of European
patent No. 0997297 in amended form.

Composition of the Board:

Chairman: W. Zellhuber
Members: S. Bridge
M. J. Vogel

Summary of Facts and Submissions

- I. Appellant I (patent proprietor) and appellant II (opponent) each lodged an appeal against the interlocutory decision of the Opposition Division maintaining European patent No. 0 997 297 in amended form.
- II. An opposition was filed against the patent as a whole 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 (added subject-matter which extends beyond the content of the application as filed, Article 123(2) EPC).
- III. The Opposition Division held that the amended patent did not contain subject-matter which extended beyond the content of the application as filed, Article 123(2) EPC and that the grounds for opposition cited in Article 100(a) EPC (lack of novelty, Article 54 EPC, and lack of inventive step, Article 56 EPC) did not prejudice the maintenance of the patent in amended form.
- IV. Oral proceedings were held before the Board of Appeal on 16 January 2009.
- V. Appellant I requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or as an auxiliary measure, that the patent be maintained on the basis of any of the sets of claims according to the auxiliary requests 1, 1a to 1d, 2, 2a to 2d and 3, in that order, submitted on 15 December 2008, except 1d and 2d, which were filed during the oral proceedings.

VI. Appellant II requested that the decision under appeal be set aside and the European patent No. 0 997 297 be revoked in its entirety and that the requests 1d and 2d be not admitted into the proceedings.

VII. Independent claim 1 of the patent as granted reads as follows:

"1. An ink cartridge (40) for mounting on a carriage (3) of an ink jet printing apparatus and for supplying ink to a printhead (5) of the ink jet printing apparatus through an ink supply needle (6), the ink cartridge comprising:
a plurality of external walls defining a container forming an ink housing chamber;
an ink supply port (44) for receiving the ink supply needle, formed on one of the walls;
a circuit board (31) mounted on one of the walls in the vicinity of the ink supply port; and
a plurality of contacts (60) for connecting to external control means and formed on the exposed surface of the circuit board, **characterized in that** the contacts (60) are formed in a plurality of rows such that one of the rows is closer to the ink supply port (44) than the other rows, the row of the contacts which is closest to the ink supply port (44) being longer than the rows of the contacts which are farther from the ink supply port".

VIII. Independent claim 1 according to auxiliary request 1 differs from claim 1 according to the main request in that the characterising part is replaced by "characterized in that the contacts (60) are provided

in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row, the lower row being longer than the upper row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

IX. Independent claim 1 according to auxiliary request 1a differs from claim 1 according to the main request in that the last paragraph starting at "a plurality of contacts (60)..." is replaced by "a plurality of contacts (60) formed on the exposed surface of the circuit board and adapted to connect to external control means via contact forming members (29, 29') of the ink jet printing apparatus which are divided into two rows each of which is located at different height in a direction in which said ink cartridge is attached or detached, the contact forming members (29, 29') being arranged at a fixed pitch, wherein the contacts (60) are provided in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row, the lower row being longer than the upper row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

X. Independent claim 1 according to auxiliary request 1b differs from claim 1 according to the main request in that the last paragraph starting at "a plurality of contacts (60)..." is replaced by "a plurality of contacts (60) formed on the exposed surface of the

circuit board and adapted to connect to external control means via contact forming members (29, 29') of the ink jet printing apparatus which are divided into two rows each of which is located at different height in a direction in which said ink cartridge is attached or detached, the lower row comprising more contact forming members than the upper row and the contact forming members (29, 29') being arranged at a fixed pitch such that the lower row is longer than the upper row, wherein

the contacts (60) are provided in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row, the lower row being longer than the upper row, and

that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

- XI. Independent claim 1 according to auxiliary request 1c differs from claim 1 according to the main request in that the last paragraph starting at "a plurality of contacts (60)..." is replaced by "a plurality of contacts (60) formed on the exposed surface of the circuit board and adapted to connect to external control means via contact forming members (29, 29') of the ink jet printing apparatus which are divided into two rows each of which is located at different height in a direction in which said ink cartridge is attached or detached, the lower row comprising four contact forming members and the upper row comprising three contact forming members, and the contact forming members (29, 29') being arranged at a fixed pitch such

that the lower row is longer than the upper row,
wherein
the contacts (60) are provided in an upper row and a
lower row such that the lower row is closer to the ink
supply port (44) than the upper row, the lower row
being longer than the upper row, and
that the circuit board is arranged on a side wall of
said ink cartridge close to said ink supply port, and
each row is located at an interval in a direction in
which the ink cartridge is attached or detached".

XII. Independent claim 1 according to auxiliary request 1d
reads as follows:

"1. An ink jet printing apparatus comprising an
external control means and an ink cartridge (40)
mounted on a carriage (3) of the ink jet printing
apparatus and for supplying ink to a print head (5) of
the ink jet printing apparatus through an ink supply
needle (6), the ink cartridge comprising:
a plurality of external walls defining a container
forming an ink housing chamber;
an ink supply port (44) receiving the ink supply
needle, formed on one of the walls;
a circuit board (31) mounted on one of the walls in the
vicinity of the ink supply port and comprising a
plurality of contacts (60) for connecting to the
external control means;
the plurality of contacts (60) consisting of contacts
formed on the exposed surface of the circuit board and
connected to the external control means via contact
forming members (29, 29') of the ink jet printing
apparatus which are divided into two rows each of which
is located at different height in a direction in which
said ink cartridge is attached or detached, the lower

row consisting of four contact forming members and the upper row consisting of three contact forming members, and the contact forming members (29, 29') being arranged at a fixed pitch and alternating such that the lower row is longer than the upper row, wherein the contacts (60) are provided in an upper row of three electrodes and a lower row of three electrodes such that the lower row is closer to the ink supply port (44) than the upper row, the lower row being longer than the upper row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

- XIII. Independent claim 1 according to auxiliary request 2 differs from claim 1 according to the main request in that the characterising part is replaced by "characterized in that the contacts (60) are formed in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row and longer than the upper row, wherein the upper row comprises a middle contact and a respective separate side contact on both sides thereof and the lower row having a respective separate end contact at each end of the lower row, the arrangement being such that each of the end contacts of the upper row terminates closer in the direction of the rows to the middle contact as compared to the respective end contact of the lower row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

XIV. Independent claim 1 according to auxiliary request 2a differs from claim 1 according to auxiliary request 1a in that the last two paragraphs starting at "the contacts (60) ..." are replaced by " the contacts (60) are formed in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row and longer than the upper row, wherein the upper row comprises a middle contact and a respective separate side contact on both sides thereof and the lower row having a respective separate end contact at each end of the lower row, the arrangement being such that each of the end contacts of the upper row terminates closer in the direction of the rows to the middle contact as compared to the respective end contact of the lower row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

XV. Independent claim 1 according to auxiliary request 2b differs from claim 1 according to auxiliary request 1b in that the last two paragraphs starting at "the contacts (60)..." are replaced by "the contacts (60) are formed in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row and longer than the upper row, wherein the upper row comprises a middle contact and a respective separate side contact on both sides thereof and the lower row having a respective separate end contact at each end of the lower row, the arrangement being such that each of the end contacts of the upper row terminates closer in the direction of the rows to the middle contact as compared to the respective end

contact of the lower row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

XVI. Independent claim 1 according to auxiliary request 2c differs from claim 1 according to auxiliary request 1c in that the last two paragraphs starting at "the contacts (60)..." are replaced by "the contacts (60) are formed in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row and longer than the upper row, wherein the upper row comprises a middle contact and a respective separate side contact on both sides thereof and the lower row having a respective separate end contact at each end of the lower row, the arrangement being such that each of the end contacts of the upper row terminates closer in the direction of the rows to the middle contact as compared to the respective end contact of the lower row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

Independent claim 1 according to auxiliary request 2d differs from claim 1 according to auxiliary request 1d in that the last two paragraphs starting at "the contacts (60)..." are replaced by "the contacts (60) are formed in an upper row of three electrodes and a lower row of three electrodes such that the lower row is closer to the ink supply port (44) than the upper row and longer than the upper row, wherein the upper

row comprises a middle contact and a respective separate side contact on both sides thereof and the lower row having a respective separate end contact at each end of the lower row, the arrangement being such that each of the end contacts of the upper row terminates closer in the direction of the rows to the middle contact as compared to the respective end contact of the lower row, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

XVII. Independent claim 1 according to auxiliary request 3 reads as follows:

"1. An ink jet printing apparatus comprising an ink cartridge (40) mounted on a carriage (3) of the ink jet printing apparatus and for supplying ink to a print head (5) of the ink jet printing apparatus through an ink supply needle (6), the ink cartridge comprising: a plurality of external walls defining a container forming an ink housing chamber; an ink supply port (44) receiving the ink supply needle, formed on one of the walls; a circuit board (31) mounted on one of the walls in the vicinity of the ink supply port; and a plurality of contacts (60) formed on the exposed surface of the circuit board and connected to external control means via contact forming members (29, 29') of the ink jet printing apparatus which are divided into two rows each of which is located at different height in a direction in which said ink cartridge is attached or detached, the lower row comprising four contact forming members and the upper row comprising three

contact forming members, and the contact forming members (29, 29') being arranged at a fixed pitch such that the lower row is longer than the upper row, wherein

the contacts (60) are provided in an upper row and a lower row such that the lower row is closer to the ink supply port (44) than the upper row, the lower row being longer than the upper row, one of the plural contacts of the lower row being formed so that it is larger than the other contacts, and that the circuit board is arranged on a side wall of said ink cartridge close to said ink supply port, and each row is located at an interval in a direction in which the ink cartridge is attached or detached".

XVIII. Let *feature A* denote the following extract from claim 1 of the patent as granted : "*the row of contacts closest to the ink supply port (44) being longer than the row of contacts which are farther from the ink supply port*".

XIX. In the written and oral procedure, appellant I argued essentially as follows:

Main request:

The application as filed concerns the problem of establishing a satisfactory (electrical) contact between the printer and the ink cartridge. This contact may fail because of rough handling, rattling or play between the carriage and the ink cartridge (paragraphs [0006], [0007] and [0033] of the A-publication). In consequence, the skilled reader will focus his reading of the application as filed on the arrangement

of the contacts in relation to such undesired movements.

Of the six degrees of freedom of movement of the ink cartridge, two are addressed explicitly in the description (Figure 11 shows an insufficient movement of vertical translation Δh and figure 10 shows a rotation α around the axis of the ink supply port).

In the context of rough handling, rattling or play, the skilled person will necessarily also consider other relative movements between the ink cartridge including the rotation about an axis perpendicular to the axis of the ink supply needle. From Figure 7, and in particular, figure 7(d), the skilled person will immediately realise that the row of contacts closest to the ink supply port being longer than the row of contacts which are farther from the ink supply port will contribute to solving the above problem, because the amplitude of any positional deviation due to play or rattling will be less for contacts closer to such an axis of rotation than for contacts further away from it.

In consequence, not only the structure but also the function of *feature A* is directly and unambiguously derivable for the skilled person from the application as filed.

With reference to decision T 169/83 it should be noted that : "the claims of a European Patent which in accordance with Article 123(3) do not extend the protection conferred may be limited by the fact that specific features referred to in the claims are clearly shown in the drawings originally filed and are clearly,

unmistakably and fully derivable from the drawings in terms of structure and function by a person skilled in the art and so relatable by him to the content of the description as a whole as to be manifestly part of the invention".

Therefore, the requirements of Article 123(2) EPC are met.

Auxiliary requests:

The auxiliary requests increasingly contain additional features to bring them closer to the embodiment shown in figures 5 and 7. The facts and arguments set forth above in relation to the main request apply mutatis mutandis to the subject matter of claim 1 respectively according to each one of the auxiliary requests.

Auxiliary request 1 :

Claim 1 further claims that the circuit board is arranged on "*a side wall of said ink cartridge close to said ink supply port*". Therefore, claim 1 even more specifically defines the row arrangement of the contacts and their particular position on a side wall of the ink tank close to the ink supply port.

Therefore, the requirements of Article 123(2) EPC are met.

Auxiliary request 1a:

Claim 1 claims that the contacts are "*adapted to connect to external control means via contact forming members (29, 29') of the ink jet printing apparatus which are divided into two rows each of which is located at different height in a direction in which said ink cartridge is attached or detached, the contact*

forming members (29, 29') being arranged at a fixed pitch".

The additional features of claim 1 show the skilled person that it is the row arrangement not only of the contacts but also of the contact forming members which is part of the invention. With these additional features in mind, the skilled person realizes that the arrangement of the contacts and contact forming members in well defined rows having different length is essential to the invention. Therefore, the requirements of Article 123(2) EPC are met.

Auxiliary request 1b:

Claim 1 specifies that the lower row comprises more contact forming members than the upper row of contact forming members. In combination with the feature that the contact forming members are arranged at a fixed pitch, a lower row comprising more contact forming members than the upper row means that the lower row is longer than the upper row. Therefore, *feature A* of claim 1 according to auxiliary request 1b is a necessary consequence of the other claim features. Such a situation removes any doubt on the original disclosure of *feature A* since a feature necessarily resulting from other claim features cannot violate Article 123(2) EPC.

Auxiliary request 1c:

Claim 1 further defines that the lower row comprises four contact forming members and the upper row comprises three contact forming members. In combination with the feature that the contact forming members are arranged at a fixed pitch, a lower row comprising four contact forming members and the

upper row comprising three contact forming members means that the lower row is longer than the upper row. Therefore, *feature A* of claim 1 according to auxiliary request 1c is not only clearly disclosed but is even a necessary consequence of the other claim features. Such a situation removes any doubt on the original disclosure of *feature A* since a feature necessarily resulting from other claim features cannot violate Article 123(2) EPC.

Auxiliary request 1d:

Auxiliary request 1d was amended in direct consequence of the discussion during the oral proceedings and, in consequence, must be considered admissible. Claim 1 claims a combination of an ink cartridge and a corresponding printer. According to claim 1 (penultimate paragraph of auxiliary request 1d), the contacts are in fact connected to the contact forming members of the printer. As a result, claim 1 directly reflects the arrangement and interaction of contacts 60 and contact forming members 29, 29' shown in particular in Figure 7(d).

Auxiliary request 2:

Claim 1 presents an alternative wording obtained by introducing granted claim 21 into granted claim 1 and to clarify that the circuit board is arranged on "*a side wall of said ink cartridge close to said ink supply port*".

Auxiliary requests 2a-2d:

The amendments made in the claims of auxiliary requests 2a to 2d correspond to the amendments made in the claims of auxiliary requests 1a to 1d with the only

difference that they are based on the claims of auxiliary request 2.

Auxiliary request 2d was amended in direct consequence of the discussion during the oral proceedings and, in consequence, must be considered admissible.

Auxiliary request 3:

Claim 1 again claims a combination of an ink cartridge and a printer and further introduces that one of the plural contacts of the lower row is formed so that it is larger than the other contacts. Appellant I considers that as a result, the subject matter of claim 1 can be regarded as "*photographic copy*" of Figure 7(d) which is in conformity with Article 123(2) EPC without requiring any further discussion.

XX. In the written and oral procedure, appellant II argued essentially as follows:

Main request:

Figure 7 of the application as filed is not a sufficient basis for *feature A* which includes a generalisation to arbitrary row lengths. Such a generalisation cannot be made from a single embodiment in the absence of supporting statements in the description.

The contact problem which may result in consequence of a rotation of the ink cartridge about an axis perpendicular to the ink supply port is not disclosed in the application as filed.

Feature A is not the result of deliberate technical considerations, because even if the person skilled in the art were to consider the above problem, *feature A* does not solve it : the relevant technical parameter responsible for the magnitude of any displacement of the contact positions is the distance separating the contact from the axis of rotation and not the relative lengths of the rows.

The reason for which the lower row of contacts appears longer than the upper row of contacts in figure 7(d) is that the middle contact 60-2 in the lower row is larger than the other contacts. The larger middle contact 60-2 in the lower row serves the purpose of determining the presence or absence of the ink cartridge as set out in paragraph [0035] of the A-publication. No other teaching can be gained from the application as filed.

Therefore, the subject-matter of claim 1 of the patent in suit contains added subject matter in the form of *feature A*.

Auxiliary requests:

The addition of further features into claim 1 of the respective auxiliary requests cannot overcome the objection under Article 123(2) EPC while the offending feature remains in the claims.

Late filed auxiliary requests 1d and 2d still contain the offending *feature A* and are therefore prima facie not relevant to a resolution of the objection under Article 123(2) EPC.

Furthermore, the complexity of the claims presented with auxiliary requests 1d and 2d is such that appellant II would require considerable time to prepare his case with respect to such additional patentability issues which may arise as a consequence of new elements having been introduced in the claims. Therefore, auxiliary requests 1d and 2d are not considered admissible.

Reasons for the Decision

1. Main request

Claim 1 as granted (main request) contains *feature A* which has no explicit basis in the description of the application as filed.

The embodiment disclosed in figures 5 to 7 is discussed in paragraphs [0025] to [0044] of the A-publication. Figures 5 to 7 disclose a circuit board 31 with two rows of three contacts (60-1, 60-2) wherein the middle contact 60-2 in the lower row is wider (figure 7a, c and d). The circuit board 31 which is disposed on an ink cartridge (figure 6) is disclosed in combination with seven contact forming members (29, 29') themselves arranged in fixed, alternating pitch (figure 5 and 7(d)). The lower row of contacts (60-1 and 60-2, respectively 29) shown in figure 7(a, c and d) is longer than the upper row of contacts (60-1, respectively 29').

However, there is no indication that this particular arrangement of contacts is the result of deliberate

technical considerations related to the general problem addressed by the application as filed, namely the detrimental effect of ink cartridge play, rattling or rough handling on the quality of the electrical contacts to be established between the ink cartridge and the printer (paragraphs [0006] and [0007] of the A-publication).

The particular arrangement of contacts shown in figure 7(a, c and d) may simply be the consequence of the use of a wider middle electrode 60-2 in the lower row (paragraph [0035] of the A-publication). It may also simply be the consequence of the choice of seven printer contacts which, when disposed at fixed, alternating pitch (figure 5 and paragraph [0017] of the A-publication) in two rows, result in the row having four contacts being longer than the row having three contacts. No other teaching can be gained from the application as filed.

The application as filed introduces the skilled person to the general problem of undesirable movements of the ink cartridge due to play or rough handling (paragraphs [0006] and [0007] of the A-publication).

A variety of additional problems and their respective solutions are also discussed in the application as filed. These include:

- preventing shocks directly on the circuit board during insertion of the ink cartridge, the solution being an overhang 46 (paragraph [0028] of the A-publication),
- maintaining the ink supply port and ink supply needle in an airtight fit independent of any vibrations or shocks, the solution being one or

- more elastic members (paragraphs [0030], [0031] and [0039] of the A-publication),
- holding the cartridge more securely, the solution being a larger frictional force with pressure on the ink supply port being larger than in other areas (paragraph [0038] of the A-publication),
 - preventing the user or the ink from touching the semiconductor storage means 84, the solution being a semiconductor storage means mounted on the back of the circuit board 83 (paragraph [0045] of the A-publication),
 - ensuring that the contacts are made and broken in a particular sequence, the solution being a circuit board 83 mounted at an angle θ with respect to the horizontal (paragraphs [0047] to [0050] of the A-publication).

The application as filed explicitly refers to specific kinds of movement as set out in the description, paragraph [0025] and figure 11 which shows an insufficient movement of vertical translation Δh and paragraph [0033] and figure 10 which shows a rotation α around the axis of the ink supply port.

However, there is no basis in the application as filed which would prompt the skilled person to also consider a further specific rotation, for example, about an axis perpendicular to the ink supply port, even though he has general knowledge of the six degrees of freedom of movement of a rigid body.

With respect to the contacts 29, 29' of the circuit board, the application as filed only teaches that they should be located in the vicinity of the ink supply

port (paragraphs [0033], [0042] of the A-publication) and that they should be centred on the cartridge and ink supply port (paragraphs [0023], [0032] and [0033], claims 21, 22, 34, 35, 51, 54, 55, 64 and 67 of the A-publication).

Furthermore, there is no mention of the length of a row of contacts anywhere in the description. Similarly, none of the figures provide any indication, such as, for example, a dimension or a reference sign, that the length of a row of contacts might be considered as a parameter having any relevance for the solution of the contacting, or any other, problem posed in the application as filed (see paragraphs [0006] and [0007] of the A-publication).

Therefore, the Board does not consider that the lower row of contacts (i.e. those closest to the ink supply port) being longer than the upper row of contacts (i.e. those which are farther from the ink supply port), i.e. *feature A* is "clearly, unmistakably and fully derivable from the drawings in terms of structure and function by a person skilled in the art and so relatable by him to the content of the description as a whole as to be manifestly part of the invention" (T 169/83).

On the contrary, *feature A* was not disclosed in the general form claimed and, as such, comes as a surprise to the skilled person upon reading the application as filed.

Therefore, the subject-matter of claim 1 of the patent in suit (main request) contains added subject matter in the form of *feature A*, contrary to Article 123(2) EPC.

2. Auxiliary requests 1, 1a to 1c, 2, 2a to 2c and 3

None of the admissible auxiliary requests 1, 1a to 1c, 2, 2a to 2c and 3 contains, in combination, all of the features of the embodiment disclosed in figures 5 to 7 as set out above.

Although particular features of the embodiment shown in figures 5 to 7 are disclosed in the application as filed as being optional, all of the auxiliary requests include the full generalisation contained in *feature A*.

Moreover, the amendments made in auxiliary requests 1, 1a to 1c, 2, 2a to 2c mainly concern the contact forming members provided on the printer side whilst the claims are directed only to the cartridge.

Therefore, the subject-matter of claim 1 of the admissible auxiliary requests 1, 1a to 1c, 2, 2a to 2c and 3 contains added subject matter in the form of *feature A*, contrary to Article 123(2) EPC.

3. Auxiliary Requests 1d and 2d

These auxiliary requests, filed during the oral proceedings, still include a non disclosed generalisation of the embodiment disclosed in figures 5 to 7, namely, that a lower row of three contacts is provided on the cartridge independently of the presence of a larger contact and independently of the position of such a larger contact. Thereby claim 1, according to respective auxiliary request 1d and 2d, also claims previously undisclosed subject matter.

Therefore, auxiliary requests 1d and 2d are not prima facie relevant to the resolution of the objection under Article 123(2) EPC and, furthermore, would appear to raise new issues, including new features never claimed before.

In consequence, the Board considers it appropriate to exercise its discretion not to admit these requests into the proceedings in accordance with Article 13 of the Rules of Procedure of the Boards of Appeal.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber