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**Datasheet for the decision
of 27 February 2014**

Case Number: T 2058/10 - 3.2.05

Application Number: 04779379.9

Publication Number: 1670644

IPC: B41J2/175

Language of the proceedings: EN

Title of invention:

Printing-fluid container

Patent Proprietor:

Hewlett-Packard Development Company, L.P.

Opponents:

S. O. S electronic s.r.o.
Artech GmbH design + production in plastic

Headword:

-

Relevant legal provisions:

EPC 1973 Art. 54, 111(1)
RPBA Art. 13

Keyword:

Late-filed requests - not admitted
Novelty - (yes)
Remittal to the department of first instance

Decisions cited:

Catchword:

-



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Chambres de recours**

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Case Number: T 2058/10 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 27 February 2014

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Decision under appeal: **Decision of the opposition division of the
European Patent Office posted on 16 August 2010
revoking European patent No. 1670644 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman: M. Poock

Members: H. Schram

M. J. Vogel

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged on 1 October 2010 an appeal against the decision of the opposition division, posted on 16 August 2010, by which European patent No. 1 670 644 was revoked. The statement of grounds was filed on 15 December 2010.

The opposition division held that the subject-matter of claim 1 as granted was not new, Article 54 EPC 1973.

II. Oral proceedings were held before the board of appeal on 27 February 2014.

III. The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of any of the sets of claims filed as first to fourth auxiliary requests with the statement of grounds or as fifth to ninth and eleventh auxiliary requests on 27 January 2014.

The respondents I and II (opponents 01 and 02) requested that the appeal be dismissed.

IV. The following documents were referred to in the appeal proceedings:

E1 EP-A 1 053 880;

E2 EP-A 1 28 5764;

E5 US-A 1 28 5764.

V. Claim 1 of the first auxiliary request reads as follows (in claims 1 of the first, fifth, sixth and ninth auxiliary requests added features with respect to claim

1 as granted are underlined, deletions are stricken-through):

"1. A printing-fluid container (120), comprising:
a reservoir (124) configured to hold printing fluid, wherein the reservoir (124) includes a substantially planar leading surface (126);
a gravitational bottom surface (204) and a well (206) in a gravitationally low portion of the reservoir (124), the well being recessed from the gravitational bottom surface (204) and located in a trough (212), and
a fluid interface (158) arranged on a protrusion (210) on the substantially planar leading surface (126) adjacent the well (206),
wherein the fluid interface (158) is configured to releasably receive a fluid connector (202) to draw printing fluid from the well (206), the protrusion (210) and trough (212) being substantially aligned with one another."

Claim 1 of the fifth auxiliary request reads as follows:

"1. A printing-fluid container (120), comprising:
a reservoir (124) configured to hold printing fluid, wherein the reservoir (124) includes a substantially planar leading surface (126);
a ~~gravitational~~ bottom surface (204) and a well (206) ~~in a gravitationally low portion of the reservoir (124)~~, the well being recessed from a portion of the gravitational bottom surface (204), such that the well (206) has a width and a length that are each smaller than a respective width and length of the bottom surface (204) of the reservoir (124) and
a fluid interface (158) on the leading surface (126) adjacent the well (206),

wherein the fluid interface (158) is configured to releasably receive a fluid connector (202) to draw printing fluid from the well (206)."

Claim 1 of the sixth auxiliary request reads as follows:

"1. A printing-fluid container (120), comprising:
a reservoir (124) configured to hold printing fluid, wherein the reservoir (124) includes a substantially planar leading surface (126) in the form of an outer surface of a container lid (122);
a ~~gravitational~~ bottom surface (204) and a well (206) ~~in a gravitationally low portion of the reservoir (124), the well being~~ recessed from a portion of from the gravitational bottom surface (204), and formed by a trough (212), and substantially planar leading surface (126) including a protrusion (210) being configured such that the fluid interface (158) remains within an outer perimeter (128) of the outer surface of the container lid (122), the protrusion (210) and through (212) being aligned to form the well and
a the fluid interface (158) on the leading surface (126) adjacent the well (206),
wherein the fluid interface (158) is configured to releasably receive a fluid connector (202) to draw printing fluid from the well (206)."

Claim 1 of the ninth auxiliary request reads as follows:

"1. A printing-fluid container (120), comprising:
a reservoir (124) configured to hold ~~printing fluid~~ a free volume of ink, wherein the reservoir (124) includes a substantially planar leading surface (126)

the substantially planar leading surface (126) having a downwardly-extending protrusion (210);

a ~~gravitational~~ bottom surface (204) including a trough portion (212) that aligns with the protrusion (210) and protrudes downwardly from a remaining portion of the bottom surface (204) and a well (206) that is defined by the through portion (212) in a gravitationally low portion of the reservoir (124), ~~the well being~~ and recessed from a portion of the ~~gravitational~~ bottom surface (204), and

a fluid interface (158) ~~on the leading surface (126)~~ protrusion (210) adjacent the well (206), to allow ink to drain for access by a fluid connector (202)

wherein the fluid interface (158) is configured to releasably receive a fluid connector (202) to draw ~~printing fluid~~ ink from the well (206), and the fluid interface (158) and protrusion (210) are located along a vertical axis (v) of symmetry, wherein the basic shape of the fluid container is the same to the left and right of the axis (v)."

VI. The arguments of the appellant, in writing and during the oral proceedings, can be summarized as follows:

Claims 1 of the first to fourth auxiliary requests define the subject-matter for which protection is sought not only in terms of a "well" as in claim 1 as granted but additionally in terms of a "trough". These terms were to some extent interchangeable, but there was an important difference. Whereas the term "well" defined as a recess in the gravitational bottom surface emphasised the function, ie to hold printing-fluid, the term "trough" defined its form, namely "a long, narrow depression, as between waves or ridges". The amendment "[well] ... located in a through" merely added

structure to the functional interpretation of the term "well" and was supported by lines 25 to 27 of page 22 of the application as filed.

The fifth to eleventh auxiliary requests filed one month before the oral proceedings were filed in response to the communication of the board annexed to the summons and constituted only minor changes to the existing requests on file. The board should have no reason to refuse admission of these requests.

The language used in the ninth auxiliary request corresponded more directly to that used in the application as filed. The previous term "gravitational bottom surface" had been replaced by "bottom surface", which was consistent with the terminology used in the application as filed. The subject-matter of claim 1 of this request was novel over the disclosure of documents E1, E2 and E5. Neither of these documents disclosed a printing container in which there was a printing interface and protrusion located along a vertical axis (v) of symmetry, wherein the basic shape of the container was the same to the left and right of the axis.

VII. The arguments of the respondents I and II, in writing and during the oral proceedings, can be summarized as follows:

In view of the provisional opinion of the board expressed in its communication annexed to the summons that none of the first to fourth auxiliary requests was formally allowable, there was no need for further substantiation of this matter.

The fifth to eleventh auxiliary requests filed on 27 January 2014 were late-filed and should not be admitted into the appeal proceedings. The proposed amendments for all requests were of a linguistic nature and could not impart novelty to the subject-matter of the independent claims. These amendments also contravened the requirements of Articles 84 and/or 123 EPC. The deletion of the expression "in a gravitationally low portion of the reservoir (124)" in claims 1 of the fifth to eighth auxiliary requests did not meet the requirements of Article 123(3) EPC. Moreover, the amended feature in claim 1 of the fifth auxiliary request regarding the width and length of the well was not disclosed in this generality in the application as filed, and not in figure 21 as filed. It was unclear in claim 1 of the sixth to eighth auxiliary requests whether the well was formed by a through or by the protrusion and the trough.

The additional feature "the substantially planar leading surface (126) having a downwardly-extending protrusion (210)" in claim 1 of the ninth auxiliary request was an intermediate generalisation of the disclosure of claim 8 of the application as filed, since said originally filed claim required that the reservoir included an "upright face". The expression "trough portion" present in claim 3 as filed was no longer present in the patent as granted and could not be reintroduced in claim 1 of the ninth auxiliary request. The passage on page 23, lines 4 and 5, reading "Protrusion 210 and trough 212 may be substantially aligned with one another" could be no basis for the additional feature "a trough portion (212) that aligns with the protrusion (210)", since said passage was silent about a "trough portion". The features "a well (206) that is defined by the through portion (212)" and

"to allow ink to drain for access by a fluid connector (202)" were also not originally disclosed.

The subject-matter of claim 1 of the ninth auxiliary request was not new with respect to the containers shown in figures 1 and 2 of documents E1 and E2 and figures 6 and 7 of document E5.

Reasons for the Decision

1. The appeal is admissible.
2. *Admissibility of the auxiliary requests*
 - 2.1 The fifth to ninth and eleventh auxiliary requests were filed after the appellant has filed its grounds of appeal. These requests may be admitted and considered at the board's discretion, 13(1) RPBA. One of the criteria for admitting requests that were filed after the grounds of appeal were filed is whether these requests are clearly formally allowable, ie whether they clearly meet the requirements of Article 84 EPC 1973 and Article 123 EPC.
 - 2.1.1 Claim 1 of the fifth auxiliary request differs from claim 1 of the main request inter alia in that the expression "such that the well (206) has a width and a length that are each smaller than a respective width and length of the bottom surface (204) of the reservoir (124)" has been added.

Figure 21 shows a particular embodiment of a well having a semi-circular bottom surface and a constant width that is about $\frac{1}{3}$ of the width of the bottom surface 204 and a length that is about $\frac{1}{2}$ of the length

thereof. However, the appellant was unable to show that said embodiment can be generalized to the feature now claimed.

It follows that claim 1 of the fifth auxiliary request does not meet the requirements of Article 123(2) EPC.

- 2.1.2 Claims 1 of the sixth to eighth auxiliary requests differ from claim 1 of the main request inter alia in that the expressions "[a well (206)] ... and formed by a trough (212)" and "the protrusion (210) and through (212) being aligned to form the well" have been added.

These amendments give rise to a lack of clarity, since on the one hand, the well is said to be "formed by a trough", whereas on the other hand "the protrusion (210) and through (212)" are said to form the well, contrary to Article 84 EPC 1973.

- 2.2 Consequently, the fifth to eight auxiliary requests are not admitted into the appeal proceedings.

- 2.3 The board decided to admit the ninth and eleventh auxiliary request into the appeal proceedings, because they appeared to be formally allowable and were filed with a view to overcome the objection of lack of novelty, Article 13(1) RPBA.

3. *Allowability of the amendments*

- 3.1 Claims 1 of the first to fourth auxiliary requests differ from claim 1 of the main request inter alia in that the expression "and located in a trough (212)" has been added after the expression "the gravitational bottom surface (204)".

The amended feature reads "the well being recessed from the gravitational bottom surface (204) and located in a trough (212)". Claims 1 of the first to fourth auxiliary requests therefore require that the well and the trough are two different objects.

There is no basis for this in the application as filed, for the following reasons: The passage on page 22, lines 25 to 27, of the application as filed (published version), reads as follows: "Fig. 21 somewhat schematically illustrates a protrusion 210, which aligns with a trough 212 that is recessed from a portion of bottom surface 204, thus forming a well 206" (emphasis added by the board). In other words, the trough and the well are one single object. No other conclusion can be reached, if claim 3 of the application as filed is considered. This claim reads "3. The printing-fluid container (120) of claim 2, wherein the bottom surface (204) includes a trough portion (212) that protrudes downwardly from a remaining portion of the bottom surface (204), and wherein the well (206) is at least partially defined by the trough portion (212)".

It follows that claims 1 of the first to fourth auxiliary requests do not meet the requirements of Article 123(2) EPC.

- 3.2 Claim 1 of the ninth auxiliary request differs from claim 1 of the main request in that the expression "gravitational bottom surface" has been replaced by the expression "bottom surface". In the judgment of the board, the deletion of the term "gravitational" does not extend the scope of protection conferred, since both expressions are synonyms. It may be noticed that the expression "gravitational bottom surface" is not

disclosed expressis verbis in the application documents as filed (see however page 21, lines 21 to 24, of the published version of the application as filed, where the expression "gravitational bottom" is used) and that the expression "bottom surface" is being used throughout the application as filed to denote the bottom surface 204 (see eg claims 2, 3, 9 and 10 of the application as filed).

Claim 1 of the ninth auxiliary request further differs from claim 1 of the main request in that the first and second occurrence of the wording "printing fluid" has been replaced by the expressions "a free volume of ink" and "ink", respectively, that the expression "the substantially planar leading surface (126) having a downwardly-extending protrusion (210)" has been added after the expression "planar leading surface (126)", and in that the expression "a fluid interface (158) on the leading surface (126)" has been replaced by the expression "a fluid interface (158) on the protrusion (210)". A basis for these amendments is page 9, lines 28 to 30 and claim 8 as filed. It may be noticed that the "upright face (126)" mentioned in claim 8 as filed corresponds to the leading surface or outer-face 126.

A basis for the additional features "[a bottom surface (204)] including a trough portion (212) that aligns with the protrusion (210) and protrudes downwardly from a remaining portion of the bottom surface (204)" and "[a well (206)] that is defined by the through portion (212)" is claim 3 as filed.

A basis for the additional feature "[recessed from] a portion of" is the passage on page 22, lines 25 to 27, of the application as filed (published version), cited in point 3.1 above.

A basis for the additional features "to allow ink to drain for access by a fluid connector (202)" and "the fluid interface (158) and protrusion (210) are located along a vertical axis (v) of symmetry, wherein the basic shape of the fluid container is the same to the left and right of the axis (v)" is page 21, lines 28 to 30, and page 26, lines 3, 4 and 17 to 19.

Consequently, claim 1 of the ninth auxiliary request meets the requirements of Article 123(2) and (3) EPC.

4. *Ground for opposition "lack of novelty", Article 100(a) EPC 1973 in combination with Article 54 EPC 1973*

4.1 The ink cartridge (container 1) shown in cross-section in figure 1 of documents E1 and E2 comprises a free volume of ink K for a single colour and includes an ink supply port 2 located on the "leading surface" at the left side of the drawing. There is no figure in these documents showing a front view of container 1. Each of the ink containers (ink chambers 9, 10 and 11) shown in figure 2, which is a perspective view of an ink cartridge storing three types of ink, has a rectangular leading surface which is substantially planar. However, a planar surface that has a strictly rectangular shape cannot be said to have a protrusion.

It follows that the subject-matter of claim 1 of the ninth auxiliary request is new vis-à-vis documents E1 and E2.

4.2 Document E5 discloses in figures 5 to 10 an air-liquid separating chamber 30 capable of treating four colours of waste inks simultaneously. Figure 7 shows a liquid discharging outlet port 35 disposed on a vertical

surface ("step surface") between the lower and higher bottom surface 36A and 36B of the bottom plate 26 of the rightmost chamber. The step surface has a rectangular shape with the lower two corners cut off and thus qualifies as a "substantially planar surface having a downwardly-extending protrusion". However, the step surface is not a leading surface as defined in the patent specification, cf column 8, lines 8 to 15.

The subject-matter of claim 1 of the ninth auxiliary request is therefore new vis-à-vis document E5.

5. *Remittal to the department of first instance*

The opposition division has not yet expressed itself on the ground for opposition under Article 100(a) EPC 1973 (lack of inventive step, Article 56 EPC 1973). It is thus considered appropriate to remit the case to the department of first instance for further prosecution, Article 111(1) EPC 1973.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated