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**Datasheet for the decision
of 24 October 2014**

Case Number: T 0769/12 - 3.2.05

Application Number: 06728455.4

Publication Number: 1853419

IPC: B31F1/07

Language of the proceedings: EN

Title of invention:

Method and device for joining plies of paper

Patent Proprietor:

Fabio Perini S.p.A.

Opponent:

SCA Tissue France

Headword:

Relevant legal provisions:

EPC 1973 Art. 56

Keyword:

Inventive step (no): main request and auxiliary requests 1-4

Inventive step (yes): auxiliary request 5

Admission of late-filed documents (no)

Decisions cited:

Catchword:



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Case Number: T 0769/12 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 24 October 2014

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 7 February 2012 rejecting the opposition filed against European patent No. 1853419 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman M. Poock
Members: O. Randl
W. Ungler

Summary of Facts and Submissions

- I. The present appeal was filed against the decision of the opposition division rejecting the opposition against European patent EP 1 853 419.

The opposition division held that the ground for opposition mentioned in Article 100 a) regarding Articles 52(1) and 56 EPC 1973 did not prejudice the maintenance of the patent as granted.

The following documents were cited:

- D1: EP 1 232 057 B1;
D2: IT 01304880 (English translation D2A);
D3: IT 01259666 (English translation D3A);

For the present decision, document D5 (US 5 622 734) is also relevant.

In its decision the opposition division considered document D1 to be the closest prior art. Claim 1 of the patent as granted differed from document D1 by its characterising portion. The opposition division defined the objective technical problem as "to avoid a weakening of the web" in its longitudinal direction and came to the conclusion that the skilled person did not find in the prior art any incentive to modify the teaching of document D1 in a way that would lead him to the claimed solution.

- II. The appellant (opponent) requested that the decision under appeal be set aside and the European patent No. 1853419 be revoked.

The respondent (patent proprietor) requested as a main request that the appeal be dismissed, or that the decision under appeal be set aside and that the patent be maintained on the basis of the claims filed with letter of 19 December 2012 as auxiliary requests 1 to 4, or on the basis of claims 1 to 12 submitted during the oral proceedings of 24 October 2014 as auxiliary request 5 and claims 13 to 16 as granted, or on the basis of the claims of auxiliary request 6 submitted during the oral proceedings of 24 October 2014.

III. Independent claims 1 and 11 as granted read as follows:

"1. Method for joining plies of paper, in particular tissue paper, including the steps of: embossing a first ply (V1) by means of an embossing roller (1) provided with protuberances (1P) and a pressure roller (3) cooperating with said embossing roller, thus generating protuberances (P1) on said ply (V1); feeding said first ply (V1) and a second ply (V2) between the embossing roller (1) and at least one ply-bonding unit (9); bonding said first and second ply (V1, V2) together by localized pressure in the nip between said embossing roller and said ply-bonding unit (9); wherein at least one of said plies is moistened in areas on which said localized pressure is exerted; characterized in that said localized pressure is applied along longitudinal strips of the two plies by ply-bonding wheels (9A), said strips being spaced apart from each other, and that said at least one ply (V1) is moistened only at the level of said longitudinal strips."

"11. A device for joining at least two plies (V1, V2) of paper, in particular tissue paper, comprising: an embossing roller (1) provided with embossing protuberances (1 P) on the surface thereof; a pressure

roller (3) cooperating with said embossing roller and defining therewith an embossing nip; a first feed path for a first ply (V1) towards said embossing nip; a ply-bonding unit (9) including a ply-bonding unit (9), cooperating with said embossing roller (1), positioned downstream of the pressure roller and defining a ply-bonding nip; a second feed path for a second ply (V2) towards said ply-bonding nip; and moistening means, to moisten at least one of said two plies before joining; characterized in that said ply-bonding unit (9) includes a series of wheels (9A), which are pressed against said embossing roller (1), said paths of advancement extending between said ply-bonding wheels (9A) and said embossing roller (1); and that said moistening means (11) are designed and arranged to moisten said ply (V1) only at the level of longitudinal strips, and such that the moistened areas correspond to or comprise the surface on which the ply-bonding pressure is applied."

In its response to the statement of grounds of appeal, the respondent submitted four auxiliary requests:

Claims 1 and 11 of the first auxiliary request differ from claims 1 and 11 as granted in that the ply-bonding wheels are said to be "spaced apart".

Claims 1 and 11 of the second auxiliary request differ from claims 1 and 11 of the first auxiliary request by the addition of the feature "on which said [spaced apart] ply-bonding wheels act".

Claims 1 and 11 of the third auxiliary request differ from claims 1 and 11 of the first auxiliary request by the incorporation of the effect obtained, i.e. "[such that] moistening of the ply [is/being] limited to said

longitudinal strips corresponding to the strips on which the wheels act, leaving the ply substantially dry in the adjacent bands".

Claims 1 and 11 of the fourth auxiliary request differ from claims 1 and 11 of the third auxiliary request in that the moistening is said to be obtained "by moistening means (11) designed and arranged to moisten said ply (V1) only at the level of said longitudinal strips".

In the course of the oral proceedings before the board, the respondent filed two further auxiliary requests. Only the fifth auxiliary request is relevant for this decision; it is based on the first auxiliary request, in which at least one of said plies is specified to be moistened "by means of an applicator roller (11A)" and it is further said that "said applicator roller (11A) [has] annular raised bands in positions corresponding to the wheels (9A)".

IV. The appellant argued as follows:

Main request

It has been acknowledged during the grant proceedings that the preamble of claim 1 was known from document D1, which taught that the laminating pressure could be reduced when the ply was moistened (paragraph [0014]). The steel anvil roll 50 of Figure 2 of document D1 had the same purpose as the ply-bonding wheels of claim 1. It was also taught in document D1 to selectively apply the water to the surface of the ply ([0039]). The fluid was applied at most to the top surfaces of the embossed areas of the first ply. Paragraph [0041] of document D1 also mentioned that the surface of the anvil roll 50

could have a structure to reduce the contact between the roll and the paper (*cf.* Figure 3c). The difference between claim 1 and the disclosure of document D1 was that the anvil roll 50 is a unique roll whereas claim 1 replaces the roll by a series of wheels in order to have bonding areas along "strips".

Thus document D1 disclosed that localised areas of the paper were to be moistened and that pressure was to be applied to those areas. There was a clear correspondence of the two features.

"Strips" within the meaning of the opposed patent were to be understood as series of bonded areas: Figure 1 of the opposed patent showed that the contact between the wheels and the embossing roller was along the front surfaces of the embossed paper (see also paragraph [0021] of the patent).

The problem solved by the patent was to find another way of applying pressure. The use of wheels instead of rolls was an alternative solution known from the prior art (e.g. document D3; see D3A, page 5, lines 24 and 25). There was no mention of water in document D3, but if there had been such a mention, this document would even have been novelty-destroying. Document D5 (*cf.* column 6, line 30, col 7, line 50 *et seq.*) also provided the teaching that more than one roll could be used.

That the bonding is performed along longitudinal strips was only a consequence of the use of wheels. Document D1 aimed at limiting the bonding areas because too much bonding resulted in a more rigid paper. To have the area bonded along strips was only a matter of choice but could not involve an inventive step.

As to Figure 4a of document D1, there were different ways of engraving the embossing rolls; if the pattern was inclined with respect to the "machine direction" the document would have said so.

The idea of partly bonding was absent from the patent in suit (cf. Figure 2 and page 8, last paragraph of the description as filed). When interpreting the patent in this way, the respondent added matter to its disclosure.

First auxiliary request

The additional feature was not limiting because even a very small distance, such as in Figure 4 of document D1, would qualify the strips as being "spaced apart". If the ply-bonding wheels were placed along an axis, they inevitably were spaced apart.

Second auxiliary request

The additional feature was only a clarifying feature, rephrasing what was stated in the original claim.

Third auxiliary request

The amendment expressed the purpose of document D1; one would not apply water if not for bonding. Therefore, the additional feature was not limiting with respect to document D1.

Fourth auxiliary request

In document D1 the moistening means were also designed and arranged to moisten the ply at the level of longitudinal strips (see paragraph [0039]).

Fifth auxiliary request

The opponent did not object to the admission of this request. The subject-matter of the request did not involve an inventive step because it was just one particular embodiment of the fluid applicator roll. Document D1 mentioned a pattern that is engraved on this roll such as to have a correspondence with the embossing rolls. Moreover, it was not clear what "annular raised bands" meant; this pattern on the surface of the fluid applicator roll could be understood in this way. The vague term "band" did not necessarily mean that the diameter of the roll had to be constant over the whole band but would also include variations of diameter. In order to moisten the paper, the skilled person would arrange the surface of the fluid applicator roll according to the objective to be obtained, i.e. that the water was applied to the areas corresponding to the lands. There was no inventive contribution to be found in this particular embodiment. The opponent referred to the passage of document D1 (paragraph [0024]) disclosing a "rippled appearance" of the pattern of bonding.

V. The respondent argued as follows:

Main request

The claimed invention combined well-applied pressure with adapted moistening, such that liquid is only

applied along the strips where the pressure is applied. This was not suggested in document D1.

As to the limited transfer of fluid mentioned in document D1, paragraph [0039] of this document only meant that the surface structure of the applicator roll 37 might be such that water was applied only to the top of the protrusions of the embossing roll 34.

Paragraph [0041] of document D1 stated that the anvil roll 50 might be arranged such that selective pressure was applied onto only some of the protrusions generated by the embossing roll 34. An esthetically pleasing effect was obtained by squeezing the web only in some areas. The document did not disclose to select the areas of pressure along longitudinal strips, and, most importantly, there was no link with where the water is applied. According to document D1, liquid was applied to all the embossing protrusions, but the pressure could be applied to some of those protrusions, in order to obtain a glassine appearance.

The argument that Figure 4a of document D1 disclosed longitudinal strips that were moistened, separated by very narrow longitudinal dry strips (cf. "Annexe A" filed by the opponent together with the statement of grounds of appeal), was based on the assumption that the figure had a very precise orientation with respect to the axis of the embossing roll. However, document D1 was silent with respect to the orientation of the pattern. There were good reasons (related to the wear of the roll) to avoid an alignment with the "machine direction". The documents stating the contrary reflected the state of the art in the Sixties and Seventies. Document D1 had to be read with the actual knowledge of the skilled person, who would understand

that the pattern was inclined with respect of the machine direction.

When asked by the board, the respondent explained that "longitudinal" meant "along the machine direction", because the wheels could only apply pressure along the machine direction.

The problem solved by the invention was to reduce the amount of moisture applied in order to increase the strength of the paper web. The claimed solution was a special way of concentrating the moisture, by applying the moisture only where the pressure was applied, i.e. along longitudinal strips.

None of the documents cited taught to concentrate the moisture in this way. Documents D2 and D3 clearly disclosed that no liquid was to be used on the paper. Document D2 presented dry and wet bonding as mutually exclusive alternatives. Moreover, the anvil roll 50 of document D1 was a guiding roll for the web and, therefore, had to be continuous if the paper was to be supported smoothly. Neither document D3 nor document D5 presented any advantage of using wheels instead of a single roll but presented these solutions as equivalent.

First auxiliary request

The distance between strips that was accidentally disclosed in Figure 4a of document D1 was not suitable to allow for spaced-apart ply-bonding wheels.

Second auxiliary request

In addition to the amendment corresponding to the first auxiliary request, the independent claims of the second auxiliary request clarified that the moisture was applied to the longitudinal strips, too.

Third auxiliary request

The additional feature further distinguished the invention from the disclosure of Figure 4a of document D1, where the distance between strips was so narrow that it could not correspond to the distance between spaced-apart ply-bonding wheels.

Fourth auxiliary request

The added feature distinguished the claims from the disclosure of document D1 because in Figure 4a of this document the longitudinal strips were defined by the protrusions. According to the fourth auxiliary request, the moistening means themselves were arranged to moisten along the longitudinal strips. If the skilled person replaced the anvil roll of document D1 by several wheels, the skilled person still would have to adapt the moistening means correspondingly in order to reach subject-matter covered by the fourth auxiliary request.

Fifth auxiliary request

Although filed at a late stage of the proceedings, the request should be admitted. The amendment had clear support in the description (page 8, lines 14 to 16). In view of the preliminary opinion expressed by the board in the annex to the summons, there was no reason to

expect a dismissal of the requests on file on the grounds given by the board. Also, this request was the very last chance for the respondent whereas the opponent could still obtain a revocation of the patent in national nullity proceedings.

An "annular raised band" necessarily was continuous. These bands were not to be confounded with the bands of dry portions of the plies mentioned in paragraph [0020] of the granted patent.

The additional feature was neither disclosed nor suggested in the cited prior art. The problem addressed and solved by the invention was to reduce the amount of liquid and optimise its distribution with respect to the pressure applied.

Reasons for the Decision

1. The only issue that needs to be decided by the board is whether the subject-matter of the claims on file involves an inventive step (Article 56 EPC 1973).
2. Main request
 - 2.1 Claim interpretation
 - 2.1.1 The correct interpretation of the term "strips" is of great importance for this case. The application as filed does not provide a definition of "strips". The term appears only five times in the application as filed:
 - twice in the paragraph which has become paragraph [0020] of the patent specification: "For example,

ply-bonding can be implemented by pressure or ply-bonding wheels aligned with one another axially (or even not aligned), but spaced apart. In this case moistening of the ply or plies can be limited to longitudinal strips corresponding to the strips on which the wheels act, leaving the ply substantially dry in the adjacent bands.";

- once in the paragraph which has become paragraph [0029] of the patent specification: "In any case the moistening means can apply liquid in longitudinal strips or areas.";
- once in claim 11 as filed: "... said localized pressure is applied along longitudinal strips of the two plies spaced apart from each other."; and
- once in claim 12 as filed: "... at least one ply is moistened only at the level of said longitudinal strips".

2.1.2 None of these passages provides a definition of "strips". The description only teaches that the strips are longitudinal and that they are related to the surface portion on which the ply-bonding wheels act; the latter apply pressure "along longitudinal strips".

2.1.3 The online Merriam-Webster dictionary defines "strip" as "a long, narrow piece of something". The various definitions of "band" given in this same dictionary suggest that "band" and "strip" are almost synonyms. "Longitudinal" is understood to mean "placed or running lengthwise".

2.1.4 In the absence of any particular definition in the application as filed, the skilled person would

understand "longitudinal strips" of a ply to refer to portions of the ply that extend in the direction of greatest dimension of the ply (or "machine direction") and which are relatively narrow with respect to the width of the ply. The latter is also suggested by the fact that the term is always used in its plural form, which means that a ply comprises at least two (adjacent) longitudinal strips.

This understanding is consistent with the fact that the strips are the part of the ply on which the ply-bonding wheels act, as taught in paragraph [0020] of the patent specification.

2.1.5 The fact that according to claim 1 the ply is moistened only "at the level of [the] longitudinal strips" and that according to one embodiment of the invention the moistening agent is applied only to the protuberances or some of them does not mean that the strips are to be understood as groups of protuberances. Rather, a strip may comprise a group of protuberances. To put it differently, if protuberances that are part of a strip are moistened, the ply is moistened "at the level of" the corresponding strip, but this does not mean that this strip is nothing but the set of moistened protuberances.

2.2 Closest prior art

There was agreement between the opposition division and the parties that document D1 qualified as closest prior art. The board does not see any good reason not to adopt this finding.

2.3 Disclosure of document D1

2.3.1 It is undisputed that document D1 discloses a method and device according to the preambles of claims 1 and 11 of the patent as granted.

The document also discloses that the paper is moistened at sites corresponding to the embossing knobs on the embossing roll (column 4, lines 28 to 30, etc.). Thereby the ply is "moistened only at the level of longitudinal strips" according to the interpretation developed above (see point 2.1.5).

2.3.2 It is also undisputed that document D1 does not disclose the use of ply-bonding wheels but only discloses the use of a single roll.

2.3.3 The application underlying the patent in suit does not disclose any particular advantage of the use of ply-bonding wheels. The board is not aware of any particular effect that would be apparent to the skilled person either. The underlying objective problem can, therefore, be formulated as providing an alternative way of applying the pressure.

2.4 The parties agreed that the use of several wheels instead of a single roll was known. For instance, documents D3 and D5 mention this embodiment as a simple alternative.

2.5 The skilled person starting from document D1 and faced with the above-mentioned objective problem would learn from documents D3 or D5 that a series of wheels is an appropriate alternative to a single roll. This choice as such cannot, therefore, involve an inventive step.

2.6 When implementing this obvious design choice in the device according to document D1, the skilled person would obtain an embodiment that is covered by the device of claim 11 as granted. The argument of the respondent, according to which document D1 did not teach to apply the liquid only where the ply-bonding wheels were situated, cannot prevail: the skilled person wishing to implement ply-bonding wheels would necessarily avoid any moistening in zones that are not reached by the ply-bonding wheels.

2.6.1 Fig. 4a of document D1 shows an example for a decorative pattern formed on the embossing roll. As mentioned above (see point 2.3.1), it is undisputed that D1 teaches to moisten the ply at sites corresponding to the embossing knobs on the embossing roll. When implementing ply-bonding wheels, the skilled person would arrange the latter such that they act on these sites because this is where the bonding is to be established. By doing so he would reach a configuration where the ply-bonding wheels apply the pressure on the moistened sites along spaced-apart longitudinal strips of the plies.

2.6.2 In this context, there was a discussion in respect of the alignment of the pattern shown in Figure 4a of document D1 with respect to the machine axis. It is undisputed that an alignment along the machine axis was common in the Sixties and Seventies, but the respondent has presented arguments why nowadays such an alignment would be avoided. Document D1 itself is completely silent on this matter.

As figure 4a depicts a pattern on the embossing roll, the most natural understanding would be that the pattern is aligned along the machine direction. If so,

then there is no doubt that the pressure would be applied along longitudinal strips of the two plies, each strip corresponding to the surface of the ply covered by one ply-bonding wheel.

But even if the respondent is to be followed in its opinion that the skilled person would understand the pattern to be somewhat inclined with respect to the machine direction, in order to avoid wear problems, he would still chose an inclination that would allow the wheels (which obviously have a certain width) to exert pressure on the moistened patterns. Otherwise, if a moistened pattern would not come in contact with any ply-bonding wheel, its moistening would be useless - and even detrimental, because it would weaken the web without any gain in return.

Thus, even under this assumption, the pressure would be applied along longitudinal strips, each strip corresponding to the surface of the ply covered by one ply-bonding wheel.

- 2.7 What has been said in respect of the device according to document D1 also holds true for the method disclosed therein.
- 2.8 As a consequence, the board judges that the subject-matter of both independent claims according to the main request does not involve an inventive step within the meaning of Article 56 EPC 1973.
- 2.9 Therefore, the main request cannot be allowed.

3. First auxiliary request

The additional feature does not limit the independent claims of the main request because when several ply-bonding wheels are used, they are necessarily spaced apart. Whether or not the distance between strips in Figure 4a of document D1 can be obtained with ply-bonding wheels, as argued by the respondent, is not decisive in this context.

As a consequence, the board judges that the subject-matter of both independent claims according to the first auxiliary request does not involve an inventive step within the meaning of Article 56 EPC 1973.

Therefore, this request cannot be allowed either.

4. Second auxiliary request

The further additional feature is redundant with respect to the subject-matter of the independent claims as granted; in view of the fact that the "localized pressure is applied along longitudinal strips ... by spaced-apart ply-bonding wheels", there is no further limitation obtained by adding that "said spaced-apart ply-bonding wheels act" on said longitudinal strips. The assertion of the respondent that this feature clarified the claim cannot alter this fact.

As a consequence, the board judges that the subject-matter of both independent claims according to the second auxiliary request does not involve an inventive step within the meaning of Article 56 EPC 1973.

Therefore, this request cannot be allowed either.

5. Third auxiliary request

The independent claims according to this request comprise the additional feature that there are dry bands between the moistened longitudinal strips. This feature is, however, disclosed in Figure 4a of document D1.

The respondent has pointed out that the dry bands in Figure 4a were too narrow to correspond to the distance between spaced-apart ply-bonding wheels, but the board does not find this assertion persuasive. The independent claims of the third auxiliary request do not require any particular distance between ply-bonding wheels, nor is the board aware of any implicit constraints in this respect.

As a consequence, the board judges that the subject-matter of both independent claims according to the third auxiliary request does not involve an inventive step within the meaning of Article 56 EPC 1973.

Therefore, this request cannot be allowed either.

6. Fourth auxiliary request

In the example shown in Figure 4a of document D1, all the embossing patterns are moistened and are part of a strip. Therefore, the moistening means can be said to be arranged to moisten the ply only at the level of the longitudinal strips. Therefore, the additional feature is not limiting with respect to the disclosure of document D1.

The board cannot endorse the opinion of the respondent according to which the moistening means would have to

be specially adapted in order to reach an embodiment encompassed by claim 1. As explained above (see point 2.7), the skilled person wishing to implement the obvious alternative of ply-bonding wheels in a device according to document D1 would naturally wish to ensure that the ply is moistened where the pressure is applied because any other way of proceeding would be clearly detrimental.

As a consequence, the board judges that the subject-matter of both independent claims according to the fourth auxiliary request does not involve an inventive step within the meaning of Article 56 EPC 1973.

Therefore, this request cannot be allowed either.

7. Fifth auxiliary request

7.1 Admissibility

The respondent has not objected to the admission of the fifth auxiliary request and the board considers that this request does not raise issues which the board or the appellant could not reasonably be expected to deal with without adjournment of the oral proceedings.

Therefore, this request was admitted in application of Article 13(3) of the Rules of Procedure of the Boards of Appeal (RPBA) of the EPO, Supplementary publication 1 to the OJ EPO 1/2014, page 43 et seq.).

7.2 Allowability

According to paragraph [0015] of document D1, the "fluid applicator roll operates in conjunction with a pattern roll to increase the local moisture level at selective bond sites ... The selective bond sites may

be continuous or discrete." These bond sites correspond to embossed portions of the ply.

Document D1 discloses also in its paragraph [0039] that "[t]he external surface of the fluid applicator roll 37 may comprise a pattern of essentially continuous, semi-continuous, or discrete land areas synchronized with the pattern disposed on the ... outer surface of the the embossing roll".

Thus document D1 discloses that the fluid applicator roll can be adapted so as to correspond to the pattern of the embossing roll, regardless of whether this pattern is discrete or continuous. However, in this context, document D1 does not disclose an embossing pattern corresponding to a longitudinal strip, which would necessitate a continuous band to be formed on the applicator roll.

The appellant has argued that the vague term "band" did not necessarily mean that the diameter of the roll had to be constant over the whole band but would also include variations of diameter. In this context the opponent has referred to a passage of document D1 (paragraph [0024]) disclosing a "rippled appearance" of patterns in the case of semi-continuous bond sites. The board considers this argument unpersuasive. The disclosure of the application on which the patent in suit is based (page 8, lines 14 to 16) makes clear that the raised annular bands of the fluid applicator roll are such that the ply is moistened only in the corresponding longitudinal areas. Moreover, it is said that "if ... the wheels 9A are replaced by a continuous roller, the applicator roller 11A can also be continuous" (page 8, lines 17 to 18), which establishes a correspondence between the shape of the ply-bonding

wheels and the structure of of the fluid applicator roller. The most natural interpretation of the raised annular bands, therefore, is to consider them to be continuous ribs on the fluid applicator rolls. The somewhat obscure disclosure of document D1 in regard of the "essentially continuous" and "semi-continuous" bond sites (see in particular column 6, lines 1 to 6) does not suggest, let alone disclose, such fluid applicator rolls.

Thus the difference between claim 1 and the disclosure of document D1 consists in the annular raised bands of the fluid applicator roll.

Such an arrangement is not suggested in document D1, and even less so in documents D2 and D3, which only deal with dry embossing.

The advantage of the annular raised bands can be seen in the reduction of the amount of liquid used and the optimisation of its distribution.

The board considers that the appellant has not established that the claimed solution is obvious for the skilled person.

When replacing the anvil roll of document D1 by means of ply-bonding wheels, the skilled person would not find any incentive in document D1 to provide the fluid applicator rolls with raised annular bands.

Even assuming that what is claimed is just a "particular embodiment" of the fluid applicator roll, as argued by the appellant, this finding as such would not result in the claim necessarily lacking an inventive step. Even a particular embodiment has to be

held to involve an inventive step if it cannot be established that this particular embodiment would be obvious to the skilled person.

For the reasons given above, the board considers that the documents on file do not allow to establish this fact.

This conclusion applies to both independent claims.

7.3 The board, therefore, reaches the conclusion that the method and the device of claims 1 and 11 of auxiliary request 5, respectively, involve an inventive step.

8. Admission of documents D6 to D8

In its last written submission, the opponent has submitted further documents D6 (US 4 659 608), D7 (US 3 414 459) and D8 (US 3 867 225). The point to be established by these documents, i.e. that some prior art embossing rolls have embossing patterns aligned in the machine direction, was not disputed. Moreover, the board did not have to rely on any of these documents in order to reach its decision. Therefore, the board did not have to decide on the admission of these documents into the proceedings.

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 with the order to maintain the patent as amended in the following version:
 - Claims 1 to 12 as submitted during the oral proceedings of 24 October 2014 as auxiliary request 5 and claims 13 to 16 as granted;
 - Description: pages as granted
 - Drawings: as granted.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated