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**Datasheet for the decision
of 22 September 2023**

Case Number: T 1905/20 - 3.2.05

Application Number: 14705359.9

Publication Number: 2958749

IPC: B41F17/22

Language of the proceedings: EN

Title of invention:

Can Decorator Apparatus and Method

Patent Proprietor:

Crown Packaging Technology, Inc.

Opponent:

Ball Corporation

Relevant legal provisions:

EPC Art. 56, 84, 100(c), 123(2)
RPBA 2020 Art. 12(4)

Keyword:

Added subject-matter - yes (main requ., aux. requ. 6, 11, 16)
Inventive step - no (aux. requ. 1 to 5 and 7, 9 and 10)
Lack of clarity - yes (aux. requ. 12 to 14)

Decisions cited:

G 0002/10, G 0003/14



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Case Number: T 1905/20 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 22 September 2023

Appellant I: Crown Packaging Technology, Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 August 2020 concerning maintenance of the
European Patent No. 2958749 in amended form**

Composition of the Board:

Chairman P. Lanz
Members: O. Randl
M. Blasi

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent filed an appeal against the opposition division's decision on the version in which European patent No. 2 958 749 ("the patent") can be maintained.
- II. The opposition division was of the opinion that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted and that auxiliary requests 1 to 13 did not comply with Article 123(2) EPC. Auxiliary request 14 was found to comply with the requirements of the EPC.
- III. Of all the documents taken into consideration by the opposition division, only document E5 (WO 92/09435 A1) is relevant for the board's decision.
- IV. Appellant I (the patent proprietor) requested that:
- the decision under appeal be set aside and that the patent be maintained as granted, i.e. that the opposition be rejected, or, alternatively
 - the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 7 and 9 to 13 filed with the statement of grounds of appeal on 17 December 2020 or, further alternatively
 - appellant II's appeal be dismissed, implying that the patent be maintained in the form of auxiliary request 14 as considered allowable by the opposition division or, further alternatively
 - the patent be maintained in amended form on the basis of auxiliary request 16 filed with the statement of grounds of appeal on 17 December 2020.

V. Appellant II (the opponent) requested that the decision under appeal be set aside and that the patent be revoked.

VI. Claim 1 of the patent as granted (main request) reads (the feature references used by the board have been added in square brackets):

"1. [a] Apparatus comprising:
[b] a can body conveying mechanism (1) for conveying can bodies (2) to a printing zone (3);
[c] a blanket wheel (4) [d] comprising a plurality of blanket segments (6) and [e], affixed to each blanket segment (6), a blanket (7) having a printing surface, [f] the blanket wheel (4) being configured to bring blanket printing surfaces into contact with can bodies (2) within said printing zone (3);
and [g] a plurality of ink stations (5) [h] each comprising a printing plate configured to contact the printing surfaces of passing blankets (7) in order to impart a primary ink image to the printing surfaces, [i] such that a composite ink image is formed on each blanket printing surface and is printed onto a can body (2) upon contact of the blanket printing surface and the can body (2) within the printing zone (3), wherein [j] each blanket (7) comprises a secondary image (8) represented by a surface height variation across the printing surface of the blanket,
[k] the secondary image being within a surrounding area of lower or reduced height (10) allowing the secondary image (8) to be printed on a can body (2) as a positive image, and characterised in that [l] the printing plates are configured such that said surrounding area (10) lies wholly within a region of the primary ink image that is unprinted (12) onto the blanket (7)."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request essentially in that the following additional features have been added: "[m] said blankets (7) or at least a layer of said blankets (7) presenting the printing surface are removably attached to respective blanket segments (6) [n] and each blanket (7) and/or blanket segment (6) is provided with alignment features in order to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with the secondary image (8)."

Claim 4 of auxiliary request 1 differs from claim 1 of the main request in that feature m and the following feature have been added: "wherein [p1] said apparatus further comprises an alignment device (14e) to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with the secondary image (8)."

Claim 1 of auxiliary request 2 is identical to claim 1 of auxiliary request 1.

Claim 4 of auxiliary request 2 differs from claim 1 of the main request essentially in that feature m and the following feature have been added: "wherein [p2] said apparatus further comprises an alignment device such as a jig (14e), the jig being removably attachable to a blanket segment (6) of the plurality of blanket segments, the jig (14e) further comprising an alignment surface (14f) against which a blanket (7) can be positioned in order to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with a secondary image (8)."

Claim 1 of auxiliary request 3 is identical to claim 1 of auxiliary request 1.

Claim 4 of auxiliary request 3 differs from claim 4 of auxiliary request 2 essentially in that feature p2 is replaced by the following feature: "wherein [p3] said apparatus further comprises an alignment device (14e), the alignment device (14e) being removably attachable to a blanket segment (6) of the plurality of blanket segments, the alignment device (14e) further comprising an alignment surface (14f) against which a blanket (7) is positioned in order to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with the secondary image (8)."

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 1 essentially in that the additional feature "[o] said alignment features comprise printed or scored features on the printing surface of a blanket (7)" has been added.

Claim 3 of auxiliary request 4 is identical to claim 4 of auxiliary request 1.

Claim 1 of auxiliary request 5 is identical to claim 1 of auxiliary request 4.

Claim 3 of auxiliary request 5 is essentially identical to claim 4 of auxiliary request 2.

Claim 1 of auxiliary request 6 is identical to claim 1 of auxiliary request 4.

Claim 3 of auxiliary request 6 is essentially identical to claim 4 of auxiliary request 3.

Auxiliary requests 7, 9 to 14 and 16 comprise only one independent claim.

Claim 1 of auxiliary request 7 is identical to claim 1 of auxiliary request 1.

Claim 1 of auxiliary request 9 is essentially identical to claim 4 of auxiliary request 1.

Claim 1 of auxiliary request 10 is essentially identical to claim 4 of auxiliary request 2. The only significant difference consists in that the words "can be positioned" are replaced by "is positioned" (with feature p2 becoming feature **p2'**).

Claim 1 of auxiliary request 11 is essentially identical to claim 4 of auxiliary request 3.

Claim 1 of auxiliary request 12 differs from claim 1 of auxiliary request 1 in that feature p1 has been added.

Claim 1 of auxiliary request 13 differs from claim 1 of auxiliary request 1 in that the feature p2' has been added.

Claim 1 of auxiliary request 14 differs from claim 1 of auxiliary request 12 in that feature o has been added.

Claim 10 of auxiliary request 14 reads:

"A method of operating the apparatus of any one of the preceding claims and comprising applying ink to the printing plates and imparting the primary ink images to

the blanket printing surfaces and ink to the secondary image, such that, for each blanket, said surrounding area lies wholly within an unprinted region of the primary ink image."

Claim 1 of auxiliary request 16 differs from claim 1 of auxiliary request 1 in that feature p3 has been added.

The following table summarises the features of the independent claims of each request on file. "MR" stands for the main request, "ARn" for auxiliary request of rank n. "X" indicates that the feature is present, "-" that it is absent from the claim.

Request	MR	AR		AR		AR		AR		AR		AR		AR		AR		AR		AR	
		1	2	3	4	5	6	7	9	10	11	12	13	14	16						
Claim	1	1	4	1	4	1	4	1	3	1	3	1	3	1	1	1	1	1	1	1	1
a-1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
m	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
n	-	X	-	X	-	X	-	X	-	X	-	X	-	X	-	-	-	X	X	X	X
o	-	-	-	-	-	-	-	X	-	X	-	X	-	-	-	-	-	-	-	X	-
p1	-	-	X	-	-	-	-	-	X	-	-	-	-	-	X	-	-	X	-	X	-
p2	-	-	-	-	X	-	-	-	-	-	X	-	-	-	-	-	-	-	-	-	-
p2'	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	X	-	-	X	-	-
p3	-	-	-	-	-	-	X	-	-	-	-	-	X	-	-	-	X	-	-	-	X

VII. The parties' arguments on the aspects relevant for the decision may be summarised as follows.

(a) Main request: added subject-matter

(i) Appellant I (patent proprietor)

The requirement for alignment between a blanket and a

blanket segment is inherent in the printing of can bodies using a blanket comprising a secondary image generated by a surface height variation. However, the way in which alignment is to be achieved is not essential. The statement that "alignment is further enhanced by the use of an alignment device in addition to alignment features" (paragraph [0047] of the application as filed) suggests alignment by means of a dedicated device, but this is not mandatory. Any preferred feature is optional and can be removed from a claim without extending beyond the content of the application as filed. Moreover, the above statement must be read in light of the application as a whole. Paragraph [0048] expands further on the alignment. It teaches how the alignment features/device of paragraph [0047] can be implemented. One way is to provide alignment marks on the blanket segment so that an operator can line up the corners of the blanket with the marks. Claim 4 as filed and paragraph [0048] disclose that alignment features may be provided on the blanket as an alternative or in addition to the alignment marks. Paragraph [0049] teaches the skilled person that an alignment device in the form of a jig may be provided "[a]s an alternative or additional arrangement" to these alignment features. Consequently, the alignment features may be omitted altogether where an alignment device is used, or an alignment device may be used in addition to alignment features. Taken in combination, paragraphs [0047] to [0049] convey to the skilled person that the mechanism for achieving alignment is not important. This teaching is further reinforced by paragraphs [0013] to [0020]. Moreover, the way in which alignment is achieved is not inextricably linked to solving the objective technical problem of providing cans with more attractive designs. There is no direct technical and functional link

between the alignment features or device and the characterising features of claim 1. The invention is not about the alignment. Thus, there is a direct and unambiguous basis for removing the reference to alignment features or alignment devices from claim 7 as filed without extending the claimed subject-matter beyond the content of the application as filed.

(ii) Appellant II (opponent)

Paragraphs [0011] and [0013] of the application as filed, which the board considered to be closest to the subject-matter of claim 1, disclose the presence of the alignment feature. There is no direct and unambiguous disclosure of an apparatus without alignment means. Paragraph [0013] states that the apparatus "comprises" an alignment device, not that it should comprise it. The statement in paragraph [0047] that such features "should ... be provided" concerns alignment features "on the blanket", not the device. Paragraph [0030] makes clear that some alignment means must be cited in claim 1. Alignment is required only because a secondary image is provided on the blanket. The only optional aspect of the alignment device consists in the use of jigs. Paragraphs [0014] to [0017] list possible alternatives.

(b) Admittance of the auxiliary requests

(i) Appellant I (patent proprietor)

The auxiliary requests correspond essentially to the auxiliary requests presented before the opposition division. Their admittance is requested.

(ii) Appellant II (opponent)

The auxiliary requests contain added subject-matter, lack convergence and should therefore not be admitted.

(c) Auxiliary request 1: claim interpretation

(i) Appellant I (patent proprietor)

When asked how feature 1 was to be understood, appellant I referred to Figure 6a of the patent.

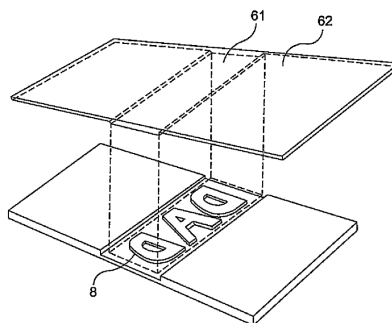


Figure 6a

The printing plate is shaped such that the area 61 provides ink to the embossed area 8 of the blanket only. This avoids wasting ink. The primary ink image is provided on both sides of the embossment, the secondary image is formed by the word "DAD". The area surrounding this word corresponds to an unprinted region where no ink is applied to the primary image. This results in a more attractive design, as mentioned in paragraph [0031] of the patent. The interpretation of feature 1 set out in point 9.1 of the board's communication is correct.

The primary image is formed on the blanket by the plate. The secondary image is formed by the surface height variation of the blanket. The words "in order to

impart a primary ink image" in feature h applies to the "plurality of ink stations" mentioned in feature g: the plurality of ink stations generates one primary image. Paragraphs [0041] and [0027] support this interpretation.

(ii) Appellant II (opponent)

Feature 1 may be understood in two ways. According to a first reading, the feature is redundant. It only states that where the blanket has recesses, nothing is printed onto the can because in this region, the blanket cannot transfer ink to the can. If the feature means something different, its precise meaning is unclear. In Figure 6a, the printing plate has a printed region 61 and an unprinted region on both sides of it. Region 61 exactly covers the recess area of the blanket. This is the opposite of feature 1. The largest part of the blanket's recess area lies within the region that is printed (and not unprinted) by region 61 of the printing plate (see the dashed lines). The embodiment of Figure 5 has the same problem. The printing plates have raised and recessed parts. Their precise shape is purely aesthetic and cannot be a technical feature. In Figure 5, the only unprinted region of the rightmost printing plate corresponds to the five letters "PRINT".

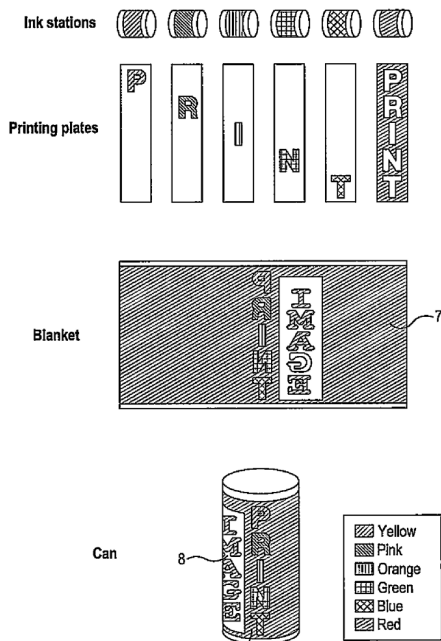


Figure 5

Thus, the printed region covers the entire recess region of the blanket. The printing plate has no recesses where the blanket is recessed. The primary image is what can be transferred from the printing plates to the blanket (feature h). Each of the printing plates defines a primary image. The combination of the primary images forms a composite image. The secondary image, which is defined by the blanket geometry, is also part of the composite image. The word "image" just refers to a shape. The invention is all about raised and recessed portions of the printing plates and blankets, not about specific images.

(d) Auxiliary request 1: patentability of claims 1, 4 and 13 in view of document E5 - Article 54 and Article 56 EPC

(i) Appellant II (opponent)

Document E5 discloses all the features of the independent claims and in particular:

- Feature j: Document E5 discloses that each blanket comprises a secondary image represented by a surface height variation (see page 3, line 12: "engraved images contained on the flexographic belts or plates") across the printing surface of the blanket (see page 3, lines 21 and 22: "the offset blankets mounted to the blanket cylinder themselves incorporate flexographic regions"). The engraved images of document E5 correspond to the secondary images of claims 1 and 4.
- Feature k: The secondary image disclosed in document E5 lies within a surrounding area of lower or reduced height allowing the secondary image to be printed on a can body as a positive image. A flexographic plate is configured such that image areas are raised above the non-image areas. The engraved images of document E5 consist of such plates (see page 10, line 28 and page 11, line 1) and provide a positive image. The surrounding area that surrounds the engraved image lies at a lower level compared to the printing surface of the raised portions of the engraved image and the printing surface of the blanket, in particular, if the offset blankets mounted to the blanket cylinder themselves incorporate flexographic regions (see page 3, lines 21 and 22). Furthermore, page 11, lines 3 to 5 states that the "blocked areas of ink act as inking rollers that deposit ink on the

raised portions of the engraved surfaces of the flexographic plates". Moreover, on page 12, lines 8 to 11, it is disclosed that "[a]s a result the raised image of the head of flexographic plate 320 will be laden with brown ink, and accordingly a brown head will be printed onto the object being printed". This also becomes clear from Figures 9A to 9E and the respective explanations on pages 11 to 13 of document E5.

- Feature 1: On pages 11 to 13 of document E5, the inking and printing process is described with reference to Figure 9. Figure 9A shows the uninked printing face of the blanket comprising a blank printing surface and secondary image consisting of numbers and a "person with a hat". Three printing plates impart ink on different parts of the blanket to form the resulting composite image of Figure 9E.

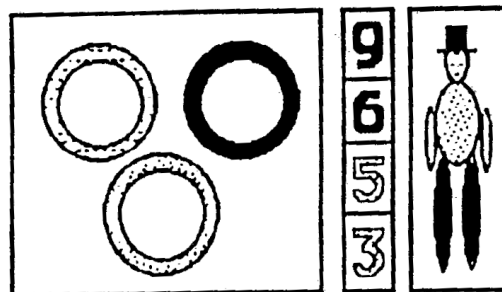


FIG. 9E

This image comprises a primary image consisting of three printed rings and an unprinted background, and a secondary image consisting of the numbers and the "person with a hat". The area surrounding the secondary image lies wholly within a region of the primary image that is unprinted onto the blanket. No modifications of the apparatus of document E5 are necessary to arrive at the claimed apparatus. The embodiment of Figure 9E can be directly compared with the embodiment of Figure 3 of the patent in which the primary image is the image that

is transferred from the printing plates to the printing surface of the blanket and consists of the letters "PRINT" plus a red background colour. The secondary image consists of the word "IMAGE". The only difference between the embodiment of Figure 9E of document E5 and the embodiment of Figure 3 of the opposed patent is that in document E5 the background is unprinted. Thus, the area surrounding the secondary image lies wholly within a region of the primary image that is unprinted onto the blanket, as required by feature l.

- Features m and n: The blanket having a secondary image needs to be aligned to the blanket segment if it has a secondary image on it. In multicolour printing, alignment of printing plates and blankets is generally performed using an alignment device interacting with alignment features. Therefore, features m and n are also at least implicitly disclosed in document E5. Precise alignment is not needed in the patent because the unprinted region results from the area of reduced height. Consequently, it is self-aligned. Appellant I's statement that some kind of alignment is always implicit also applies to document E5. If the different parts of the "person with a hat" are to have the right colour (black hat, red shirt, etc.), there must be some sort of alignment.

Figures 6 and 9 have to be read together in light of the last paragraph on page 13 of document E5.

(ii) Appellant I (patent proprietor)

Document E5 fails to disclose feature j. The flexographic belts or plates of document E5 are not part of the blankets 30, and the blankets 30 lack any

surface height variation across the printing surfaces of the blankets. Consequently, document E5 also fails to disclose features k and l. With regard to feature l, document E5 gives a detailed explanation for Figures 9A to 9E of how ink is printed onto the printing face of the flexographic plate 320. It is clear that the image on flexographic plate 320 does not lie within an unprinted region of the blanket. Moreover, document E5 does not mention alignment features or an alignment device. This is not surprising as there is no need for precise alignment because there is no boundary or gap between the primary and the secondary image. In the patent, precise alignment is needed to align the secondary image with the unprinted region of the primary image. The passage on page 5, third paragraph, of document E5 does not disclose precise alignment either. It only concerns the attachment of the blanket, not its alignment. The required alignment can be obtained by other means, such as an adjustment of the printing plates.

Figures 9 and 6 of document E5 are different and should not be combined as if they belonged to the same disclosure. In Figure 6 there is one blanket, contrary to Figure 9. Care must be taken not to unduly combine embodiments. When providing the flexographic image of Figure 9 on the blanket, material has to be removed because the printing surface is already at the printing height. However, there is no teaching in document E5 that the whole region surrounding the image should be removed. The skilled person would have had no incentive to put a surrounding area around the secondary image.

When asked what the technical effect and the inventive contribution of feature l was, appellant I explained that the surrounding area creates a separation between

parts of the image. This can avoid issues such as the inks being blurred. The feature goes beyond a mere design choice because it requires alignment between the blanket segments and the printing plates.

(e) Auxiliary requests 6, 11 and 16

(i) Appellant II (opponent)

The subject-matter of independent claim 3 of auxiliary request 6 and of independent claim 1 of auxiliary requests 11 and 16 is not originally disclosed since only a jig having an alignment surface is described in the application as filed and not a general alignment device having an alignment surface.

(ii) Appellant I (patent proprietor)

Auxiliary requests 6, 11 and 16 have are directly and unambiguously disclosed in the application as filed.

(f) Auxiliary requests 12 to 14: clarity

(i) Appellant II (opponent)

Claim 1 of each of these auxiliary requests leaves open what is to be understood by alignment features and an alignment device. The description of the patent does not allow a precise distinction to be made between alignment features and an alignment device either. The alignment marks are said to be both alignment features and an alignment device. Paragraph [0017] of the patent makes clear that the alignment device does not have to be a mechanical device. Scribe lines on the blanket also qualify as an alignment device.

(ii) Appellant I (patent proprietor)

The alignment features are provided with the blanket or blanket segment (feature n). In addition, there is a device to provide alignment (feature p1), which is not further defined. Paragraph [0032] of the patent discloses that "alignment is further enhanced by the use of an alignment device in addition to alignment features". The ordinary meaning of "device" is "tool".

Should the board find auxiliary request 12 not to comply with the requirement of clarity, the same would hold true for auxiliary requests 13 and 14.

Reasons for the Decision

1. Main request: added subject-matter (Article 100(c) EPC)

The opposition division concluded that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted because claim 1 was the result of an unallowable intermediate generalisation (see section III-A-2 of the grounds for the decision under appeal).

The board had to decide whether the subject-matter of claim 1, i.e. the combination of features a to l, extends beyond the content of the application as filed.

In application of the gold standard developed by the boards (as reaffirmed in decision G 2/10, Reasons 4.3), what is to be ascertained is whether the skilled person would have derived the combination of features a to l

directly and unambiguously, using common general knowledge, from the application as filed.

The combination of features a to l has no explicit basis in the application as filed. As was explained in point 10.1 of the board's communication pursuant to Article 15(1) RPBA 2020, the disclosure of paragraphs [0011] to [0013] of the application as filed is closest to the subject-matter of claim 1 of the main request. Paragraph [0013] comprises the explicit statement that the apparatus comprises an alignment device according to feature p2.

Appellant I argued that the omission of this feature complied with the gold standard. Its argument boils down to the assertion that the requirement for some sort of alignment is inherent in claim 1 and does not have to be specified, and that the application as filed teaches the skilled person that the precise way in which the alignment is achieved (via alignment features or an alignment device) is not important.

The board agrees that some sort of alignment in an apparatus for decorating a can body of the claimed kind is needed and, therefore, implicit. However, this does not mean that alignment features or an alignment device are necessarily present. The required alignment can also be carried out by an operator. However, the application as filed contemplates only the case where alignment features or an alignment device are provided. Consequently, the omission of any reference to alignment features or an alignment device in claim 1 has no basis in the application as filed.

It follows that claim 1 as granted extends beyond the content of the application as filed and that

Article 100(c) EPC prejudices the maintenance of the patent as granted.

Thus, the main request must be dismissed.

2. Admittance of the auxiliary requests

Auxiliary requests 4 to 6, 9 and 11 were considered in the decision under appeal and therefore form part of the appeal proceedings.

Auxiliary requests 1 to 3, 7, 10, 12, 13 and 16 are amended versions of the auxiliary requests of the same rank filed on 24 April 2020 in opposition proceedings. They were filed for the first time with appellant I's statement of grounds of appeal.

The board decided to admit the newly filed auxiliary requests into the proceedings under Article 12(4) RPBA 2020. The amendments were considered appropriate reactions to findings of the opposition division. In view of the nature of the amendments in the circumstances of the present case and the fact that the requests were filed at an early stage of the appeal proceedings, the alleged lack of convergence was not considered a relevant criterion for the admittance of these requests.

3. Auxiliary request 1

3.1 Claim interpretation

3.1.1 Feature h

According to feature h, each ink station comprises a print plate configured to contact the printing surfaces

of passing blankets "in order to impart a primary ink image to the printing surfaces". There was disagreement on whether each print plate generates its own primary ink image or whether each one contributes to the primary ink image. In view of feature l, which refers to "the primary ink image", the board concludes that there is only one primary ink image on the blanket to which each print plate contributes. This understanding is also in line with the disclosure of the description of the patent, in particular paragraphs [0026], [0027] and [0041].

3.1.2 Feature l

According to feature l, the printing plates are configured such that the surrounding area defined in feature k lies wholly within a region of the primary ink image that is unprinted onto the blanket.

The board understands the expression "unprinted onto the blanket" to be equivalent to "unprinted on the blanket". Feature l is understood to mean that the primary image generated on the blanket comprises a region that is unprinted (i.e. blank, see paragraph [0003] of the patent) and that the area of reduced height surrounding the secondary image is provided entirely within that unprinted region.

The question arose whether feature l is implicit in features a to k because the area of reduced height results in an unprinted region on the blanket and lies necessarily within that region. The board concludes that this is not the case because claim 1 does not require the secondary image to be generated via the primary ink image. An apparatus in which the secondary image is generated via a dedicated ink station that is

not part of the ink stations of feature g that contribute to the primary ink image of feature h would also be encompassed by claim 1. In that case, the area surrounding the secondary image is not necessarily within a region of the primary ink image that is unprinted on the blanket but can be provided in a region that is not part of the primary ink image.

3.1.3 Overall conclusion on the interpretation of claims 1 and 4

The "primary ink image" is the composite ink image resulting from the ink provided by the plurality of ink stations of feature g. This composite image on the blanket comprises an unprinted region on the blanket's printing surface. The surrounding area of lower or reduced height around the secondary image lies wholly within this unprinted region. This is not redundant because the surrounding area or reduced height may lie within a larger unprinted region of the primary ink image. The unprinted region is not necessarily generated by the recess. The ink for the secondary image is not necessarily provided by the printing plates of feature h but could be provided by a dedicated printing plate.

3.2 Patentability with regard to document E5 - Article 54 and Article 56 EPC

Document E5 discloses a decorating press for printing on cylindrical objects such as drink cans. The press comprises a blanket cylinder with printing blankets 30. The image engraved on an offset printing plate cylinder 410 is "printed" onto the surface of rubber offset blanket 30 (see Figure 7). There is also a multi-image printing unit 300. Its polygonal cylinder 310 can be

rotated so that each of the flexographic plates 320 can be successively presented as a printing face.

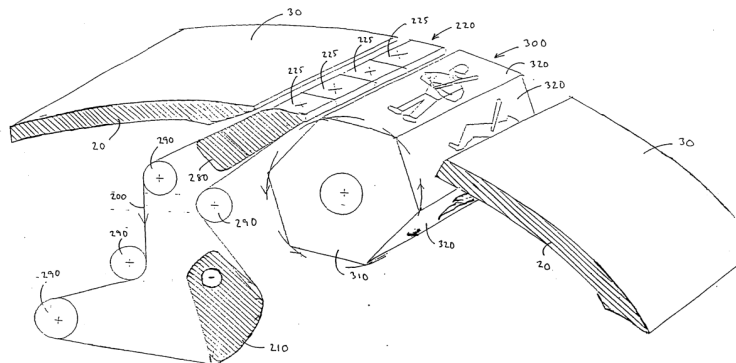


Fig. 3

3.2.1 Distinguishing features

The opposition division dealt with the disclosure of document E5 in the context of auxiliary request 14 in section III-F 3.1.1 of the decision under appeal. It concluded that document E5 did not disclose features l and p1. Appellant I argued that feature j and k were not disclosed either. Appellant II expressed the view that all features of claims 1 and 4 are disclosed in document E5.

(a) Feature j and k

The opposition division considered that the embodiment of Figure 6, in which the blankets 30 themselves incorporate flexographic regions 30A with engraved images, discloses feature j and k. The board agrees.

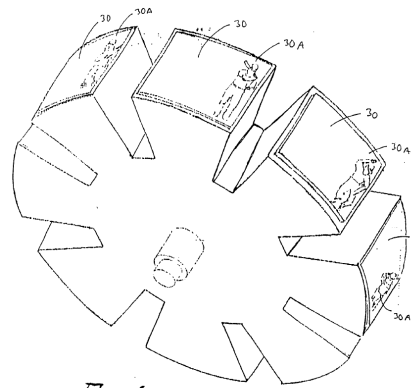
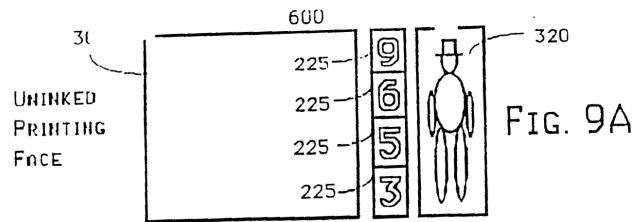


Fig. 6.

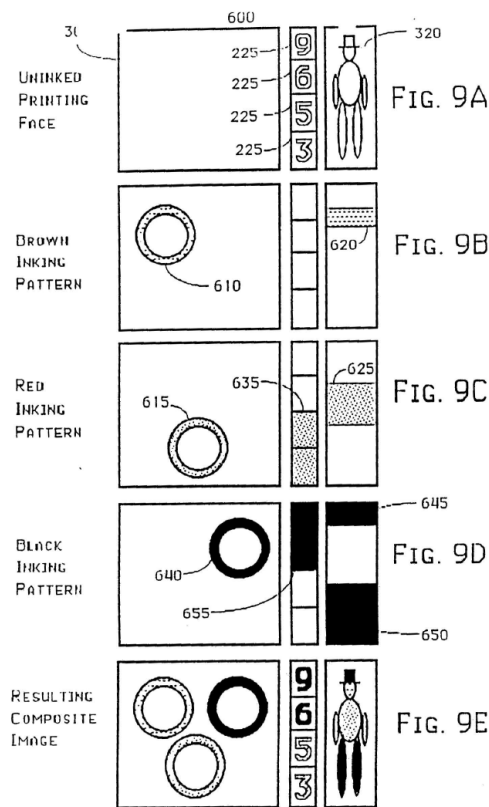
However, feature j is disclosed in the context of the embodiment of Figure 6, which is different from the embodiment of Figure 9. In the latter, which is similar to the one of Figure 3, the flexographic plate 320 is not incorporated in the blanket 30.



Thus, the device of Figure 9 does not disclose feature j.

(b) Feature l

Appellant I referred to Figures 9A to 9E, which show examples of images transferred to the blanket cylinder by three different coloured printing stations (page 5, first paragraph of document E5).

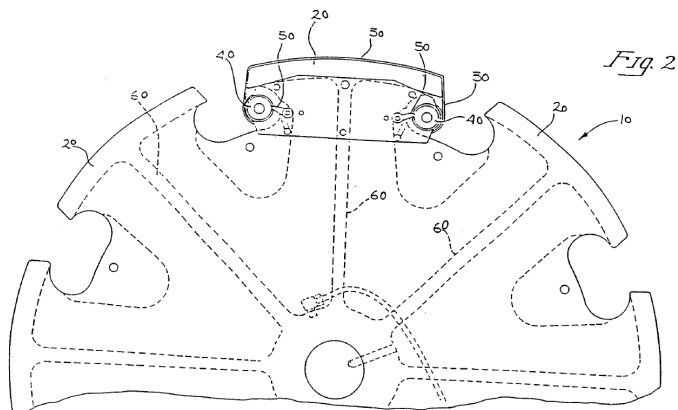


Appellant II construed the three rings and the unprinted background as the primary image and the numbers and the "person with a hat" as the secondary image. However, as mentioned under point (a), the secondary image is not provided on the blanket. Therefore, the area surrounding the secondary image, which is provided on the flexographic plate 320, cannot be said to lie within a region of the primary ink image, which is provided on the blanket 30. Consequently, feature 1 is not disclosed here.

(c) Feature p1

The board agrees with the opposition division's conclusion that alignment features and an alignment device are disclosed on page 5, lines 16 to 23 of document E5, where it is stated that blanket 30 is tensioned over each segment 20 by means of tensioning

rollers 40 and pawls 50 to secure blanket 30 in the desired location on the peripheral face of the segment.



The board is unable to endorse appellant I's assertion that the tensioning rollers and pawls securing the blanket in the desired location on the segment do not constitute alignment features. By ensuring that the blanket is attached in the desired location, these means contribute to the alignment of the blanket with respect to the printing plates.

(d) Conclusion

The subject-matter of claims 1 and 4 (and, consequently, of claim 13) is not anticipated by document E5 because this document fails to disclose features j and l in combination with the other features of claims 1 and 4.

3.2.2 Obviousness

Document E5 comprises the explicit statement that "instead of using a separate hexagonal multi-image printing unit to provide multiple images, the offset blankets mounted to the blanket cylinder themselves

[may] incorporate flexographic regions" (see page 3, lines 19 to 22).

The skilled person considering the embodiment of Figure 9 and following this invitation to incorporate the flexographic region 320 into the blanket 30 would have implemented feature j. By doing so, the skilled person would necessarily have provided the secondary image and the area surrounding it in the vicinity of the primary ink image on the blanket. As the definition and in particular the delimitation of the primary image is unspecified in claims 1, 4 and 13, the entire surface of the blanket not covered by the primary ink image can be regarded as the region of the primary ink image that is unprinted onto the blanket. Therefore, by providing the secondary image and the area surrounding it in the vicinity of the primary ink image on the blanket, the skilled person would necessarily have reproduced feature l.

Consequently, features j and l cannot justify the presence of an inventive step.

This conclusion concerns both independent apparatus claims 1 and 4, and corresponding method claim 13. Consequently, the subject-matter of claims 1, 4 and 13 does not involve an inventive step within the meaning of Article 56 EPC.

3.2.3 Conclusion on auxiliary request 1

The subject-matter of auxiliary request 1 does not involve an inventive step.

It follows that the patent cannot be maintained on the basis of auxiliary request 1.

4. Auxiliary requests 2 and 3

Claim 1 of auxiliary requests 2 and 3 is identical to claim 1 of auxiliary request 1, which was found not to involve an inventive step (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary requests 2 and 3.

5. Auxiliary request 4

Claim 3 of auxiliary request 4 is identical to claim 4 of auxiliary request 1, which was found not to involve an inventive step (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 4.

6. Auxiliary request 5

Claim 3 of auxiliary request 5 differs from claim 4 of auxiliary request 1 in that feature p1 is replaced by feature p2.

According to feature p2, the apparatus "further comprises an alignment device such as a jig ..., the jig being removably attachable to a blanket segment ... of the plurality of blanket segments, the jig ... further comprising an alignment surface ... against which a blanket ... can be positioned in order to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with a secondary image".

The reference to a jig, which is introduced by "such as", corresponds to an optional feature. An optional feature is not suitable to further distinguish the claimed subject-matter and is therefore not to be taken into account for the examination of novelty or inventive step.

Therefore, for the examination of patentability, feature p2 is equivalent to feature p1.

It follows that the subject-matter of claim 3 of auxiliary request 5 does not involve an inventive step for the same reasons as the subject-matter of claim 4 of auxiliary request 1 (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 5.

7. Auxiliary request 6

Claim 3 of auxiliary request 6 differs from claim 4 of auxiliary request 1 in that feature p1 is replaced by feature p3.

Feature p3 is based on feature p2. However, it differs from feature p2 in that all references to a jig have been removed. This amendment violates the requirements of Article 123(2) EPC because there is no disclosure in the application as filed on an alignment device other than a jig that is removably attachable to a blanket segment.

It follows that the patent cannot be maintained on the basis of auxiliary request 6.

8. Auxiliary request 7

Claim 1 of auxiliary request 7 is identical to claim 1 of auxiliary request 1, which was found not to involve an inventive step (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 7.

9. Auxiliary request 9

Claim 1 of auxiliary request 9 is identical to claim 4 of auxiliary request 1, which was found not to involve an inventive step (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 9.

10. Auxiliary request 10

Claim 1 of auxiliary request 10 differs from claim 3 of auxiliary request 5 in that feature p2 is replaced by feature p2'.

Feature p2' differs from feature p2 in that the jig comprises an alignment surface against which a blanket is (instead of "can be") positioned. This means that this positioning is not potential but effective.

As far as patentability is concerned, the considerations relating to feature p2 also apply to feature p2': the jig-related features are optional, so feature p2' is also equivalent to feature p1.

It follows that the subject-matter of claim 1 of auxiliary request 10 does not involve an inventive step

for the same reasons as the subject-matter of claim 4 of auxiliary request 1 (see point 3.2 above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 10.

11. Auxiliary request 11

Claim 1 of auxiliary request 11 comprises feature p3, the inclusion of which constitutes a violation of Article 123(2) EPC for the reasons given for auxiliary request 6 (see point 7. above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 11.

12. Auxiliary request 12 to 14

Claim 1 of auxiliary request 12 differs from claim 1 of auxiliary request 1 in that feature p1 has been added. This means that in addition to the alignment features of feature n, the apparatus has to further comprise an alignment device having exactly the same purpose as the alignment features, i.e. to allow the blankets and blanket segments to be correctly aligned such that, for each blanket printing surface, a composite ink image is correctly aligned with the secondary image.

This combination of features was not present in the claims as granted and is therefore open to objections relating to the clarity within the meaning of Article 84 EPC, in application of decision G 3/14 of the Enlarged Board of Appeal (see G 3/14, OJ EPO 2015, A102, Order).

The board agrees with appellant II that the simultaneous presence of features n and p1 results in a lack of clarity because the distinction and relationship between the alignment features and the alignment device is unspecified.

Appellant I's reference to paragraph [0032] of the patent is not decisive because, in line with established case law, claims must be clear in themselves when read by the person skilled in the art without any reference to the content of the description (see "Case Law of the Boards of appeal of the EPO", tenth edition, July 2022, section II.A 3.1).

But even if it were permissible to rely on the description to clarify the claim, this would not lead to a different conclusion because the description itself uses the concepts of alignment features and alignment device in an inconsistent manner. Alignment marks are referred to as alignment features (see paragraphs [0032] and [0033] of the patent) and as an alignment device (see paragraphs [0017] and [0018] of the patent).

Consequently, auxiliary request 12 suffers from a lack of clarity, and the patent cannot be maintained on the basis of this auxiliary request.

The same reasoning applies to auxiliary requests 13 and 14, as was also admitted by appellant I.

13. Auxiliary request 16

Claim 1 of auxiliary request 16 comprises feature p3, the inclusion of which constitutes a violation of Article 123(2) EPC for the reasons given for auxiliary request 6 (see point 7. above).

Consequently, the patent cannot be maintained on the basis of auxiliary request 16.

14. Overall conclusion

As none of appellant I's requests comply with the requirements of the EPC, the patent cannot be maintained in amended form on the basis of any of these requests.

Consequently, the patent must be revoked.

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:



N. Schneider

P. Lanz

Decision electronically authenticated