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Datasheet for the decision of 11 November 2025

Case Number: T 1052/23 - 3.4.03

Application Number: 16001157.3

Publication Number: 3086179

IPC: G03F7/20

Language of the proceedings: EN

Title of invention:
CURING OF PHOTO-CURABLE PRINTING PLATES WITH FLAT TOPS OR ROUND TOPS

Patent Proprietor:
Esko-Graphics Imaging GmbH

Opponent:
XSYS Germany GmbH

Relevant legal provisions:
EPC Art. 76(1), 111(1)
RPBA 2020 Art. 13(1), 13(2), 11

Keyword:

Divisional application - claims 1, 5, and 6 as granted, auxiliary requests 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 3, 3-1, 3a, 3a-1, 4, 4-1, 5, 5a, 5a-1, 6, 6-1, 7, 7-1, 8, 8-1, 8a - subject-matter extends beyond content of earlier application (yes)
Amendment after summons - auxiliary requests 0*, 0a*, 0a-1*, 0b*, 0b-1*, 1*, 1-1*, 2*, 2-1*, 3*, 3-1*, 3a*, 3a-1*, 4*, 4-1*, 5*, 5a*, 5a-1* - taken into account (no) - auxiliary request 8a* - taken into account (yes)
Remittal to the department of first instance - (yes)

Decisions cited:

G 0002/10, G 0001/24, T 1232/23, T 1465/23, T 1846/23, T 1069/23, T 1351/23, T 0412/24, T 2034/23, T 1402/24, T 2048/22, T 0873/23

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Case Number: T 1052/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 11 November 2025

Appellant: (Patent Proprietor)	Esko-Graphics Imaging GmbH Zusestraße 4a 25524 Itzehoe (DE)
Representative:	Müller-Boré & Partner Patentanwälte PartG mbB Friedenheimer Brücke 21 80639 München (DE)
Appellant: (Opponent)	XSYS Germany GmbH Industriestrasse 1 77731 Willstatt (DE)
Representative:	Arnold & Siedsma Bezuidenhoutseweg 57 2594 AC The Hague (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 14 April 2023 concerning maintenance of the European Patent No. 3086179 in amended form.**

Composition of the Board:

Chairman	T. Häusser
Members:	M. Ley
	G. Decker

Summary of Facts and Submissions

I. The appeals of the patent proprietor and the opponent are against the interlocutory decision of the opposition division to maintain the European patent EP 3 086 179 (hereinafter: *the opposed patent*) in amended form on the basis of auxiliary request 0a-1 pursuant to Article 101(3)(a) EPC.

The opposed patent is based on European patent application 16 001 157, which is a European divisional application in accordance with Article 76 EPC of earlier European patent application EP 09 161 037 A1 (hereinafter: *the parent application*).

II. The opposition division held that claim 1 as granted extended beyond the parent application as originally filed so that the ground of opposition according to Article 100(c) EPC prejudiced the maintenance of the patent. It further held that auxiliary request 0a-1 met the requirements of Articles 76(1), 123(2), 123(3), 84, 83 EPC and that the subject-matter of claim 1 of said auxiliary request was novel (Articles 52(1), 54(1) and (2) and (3) EPC) and involved an inventive step (Articles 52(1) and 56 EPC).

III. The patent proprietor-appellant (hereinafter: *the patent proprietor*) requests as a main request that the decision under appeal be set aside and that the patent be maintained as granted, i.e. that the opposition be rejected.

Alternatively, it requests that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims of one of

auxiliary requests 0*, 0a, 0a*, 0a-1 or 0a-1*. Auxiliary request 0a-1 is tantamount to the request that the opponent's appeal be dismissed.

Alternatively, it requests that the decision under appeal be set aside and the case be remitted to the opposition division for further prosecution.

Alternatively, it requests that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of one of auxiliary requests 0b, 0b*, 0b-1, 0b-1*, 1, 1*, 1-1, 1-1*, 2, 2*, 2-1, 2-1*, 3, 3*, 3-1, 3-1*, 3a, 3a*, 3a-1, 3a-1*, 4, 4*, 4-1, 4-1*, 5, 5*, 5a, 5a*, 5a-1, 5a-1*, 6, 6-1, 7, 7-1, 8, 8-1, 8a, 8a*, 8a-1, 8a-1*, 9, 9*, 9-1, 9-1*, 10, 10*, 10a, 10a*, 10a-1 or 10a-1*.

Auxiliary requests 1 to 10 were filed before the opposition division with the letter dated 15 November 2021, auxiliary requests 0a and 0b were filed before the opposition division with the letter dated 22 November 2022, auxiliary requests 5a and 10a were filed before the opposition division with the letter dated 23 January 2023, auxiliary requests 0a-1, 0b-1, 1-1, 2-1, 3-1, 4-1, 5a-1, 6-1, 7-1, 8-1, 9-1 and 10a-1 were filed during the oral proceedings before the opposition division on 24 January 2023, auxiliary requests 3a, 3a-1, 8a and 8a-1 were filed with the reply to the opponent's statement of grounds of appeal received on 21 December 2023 and all auxiliary requests ending with a star ("*") were filed with the letter received on 13 October 2025.

IV. The opponent-appellant (hereinafter: *the opponent*) requests that the decision be set aside and the patent be revoked.

V. Claim 1 as granted has the following wording (feature labelling according to the impugned decision):

1.1 *A method of curing a digital printing plate (503; 703) made of or having photo-curable material, e.g. ultraviolet-curable material thereon, the method comprising:*
1.2 *producing light energy at a wavelength or wavelengths suitable for curing in part the photo-curable material on the printing plate (503; 703) using a light exposure unit (505; 605; 1509; 1609; 1709) capable of generating at least a first illumination intensity and a second illumination intensity,*
1.3 *the second illumination intensity being higher than the first illumination intensity; and*
1.4a *curing in part the photo-curable material by the first illumination intensity or the second illumination intensity,*
1.4b *such that curing can produce printing features on the plate (503; 703) to have flat tops at the second illumination intensity or round tops at the first illumination intensity according to the illumination intensity output by the light exposure unit (505; 605; 1509; 1609; 1709).*

Claim 5 as granted has the following wording:

A method as recited in any one of the preceding claims, further comprising transferring imaging data, using an imaging unit having imaging elements, to a part of the printing plate (503; 703) which precedes the curing illumination part of the printing plate (503; 703).

Claim 6 as granted has the following wording:

A method as recited in any one of the preceding claims,

further comprising arranging the light exposure unit (505; 605; 1509; 1609; 1709) to cover one dimension of the printing plate (503; 703).

VI. Claim 1 of auxiliary request 0* corresponds to claim 1 as granted with feature 1.4b amended as follows:

1.4b' *such that curing can produce printing features on the plate (503; 703) to have flat tops at the second illumination intensity ~~or~~and round tops at the first illumination intensity according to the illumination intensity output by the light exposure unit (505; 605; 1509; 1609; 1709).*

VII. Claims 5 and 6 of auxiliary request 0a correspond to claims 5 and 6 as granted.

VIII. Claim 1 of auxiliary request 0a* corresponds to claim 1 as granted with features 1.4a and 1.4b amended as follows:

1.4a' *curing in part the photo-curable material by selecting the first illumination intensity or selecting the second illumination intensity,*
1.4b'' *such that curing can produce printing features on the plate (503; 703) to have flat tops at the selected second illumination intensity ~~or~~and round tops at the selected first illumination intensity according to the illumination intensity output by the light exposure unit (505; 605; 1509; 1609; 1709).*

IX. Claims 5 and 6 of auxiliary request 0a-1 correspond to claims 5 and 6 as granted.

X. Claim 1 of auxiliary request 0a-1* corresponds to claim 1 of auxiliary request 0a* with the wording "the

light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2.

XI. Claims 5 and 6 of auxiliary request 0b correspond to claims 5 and 6 as granted.

XII. Claim 1 of auxiliary request 0b* has the following wording:

1.1' *A method of curing a digital printing plate (503; 703) having photo-curable material underneath an ablatable layer including revealed areas, the method comprising:*
1.2' *producing light energy at a wavelength or wavelengths suitable for curing in part the photo-curable material through the revealed areas using a light exposure unit (505; 605; 1509; 1609; 1709) capable of generating at least a first illumination intensity and a second illumination intensity,*
1.3 *the second illumination intensity being higher than the first illumination intensity; and*
1.4a' *curing in part the photo-curable material by selecting the first illumination intensity or selecting the second illumination intensity,*
1.4b'' *such that curing can produce printing features on the plate (503; 703) to have flat tops at the selected second illumination intensity and round tops at the selected first illumination intensity according to the illumination intensity output by the light exposure unit (505; 605; 1509; 1609; 1709).*

XIII. Claims 5 and 6 of auxiliary request 0b-1 correspond to claims 5 and 6 as granted.

XIV. Claim 1 of auxiliary request 0b-1* corresponds to claim 1 of auxiliary request 0b* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2'.

XV. Claims 5 and 6 of auxiliary request 1 correspond to claims 5 and 6 as granted. Only some reference signs have been deleted.

XVI. Claim 1 of auxiliary request 1* has the features 1.1', 1.2', 1.3, 1.5, 1.6, 1.4a and 1.4b' (in this order), wherein features 1.5 and 1.6 have the following wording:

1.5 *wherein the digital printing plate is placed on a flatbed and*
1.6 *the light exposure unit (605; 1609; 1709) comprises a plurality of light emitting diodes, LEDs, and a power supply therefor;*

XVII. Claims 5 and 6 of auxiliary request 1-1 correspond to claims 5 and 6 as granted. Only some reference signs have been deleted.

XVIII. Claim 1 of auxiliary request 1-1* corresponds to claim 1 of auxiliary request 1* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2'.

XIX. Claims 5 and 6 of auxiliary request 2 correspond to claims 5 and 6 as granted. Only some reference signs have been deleted.

XX. Claim 1 of auxiliary request 2* has the features 1.1', 1.2', 1.3, 1.5, 1.6, 1.4a' and 1.4b'' (in this order).

XXI. Claims 5 and 6 of auxiliary request 2-1 correspond to claims 5 and 6 as granted. Only some reference signs have been deleted.

XXII. Claim 1 of auxiliary request 2-1* corresponds to claim 1 of auxiliary request 2* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2'.

XXIII. Claim 1 of auxiliary request 3 has the features 1.1', 1.2', 1.3, 1.5, 1.7, 1.6', 1.4a', 1.8, 1.4b (in this order), wherein features 1.7, 1.6' and 1.8 have the following wording:

1.7 *wherein the light exposure unit (1609; 1709) covers one dimension of the digital printing plate, and*

1.6' *wherein the light exposure unit (1609; 1709) comprises a plurality of light emitting diodes, LEDs;*

1.8 *and while producing relative motion between the light exposure unit (1609; 1709) and the digital printing plate*

Claim 3 of auxiliary request 3 corresponds to claim 5 as granted. Only some reference signs have been deleted.

XXIV. Claim 1 of auxiliary request 3* has the features 1.1', 1.2', 1.3, 1.5, 1.7, 1.6, 1.4a', 1.8 and 1.4b'' (in this order).

XXV. Claim 1 of auxiliary request 3-1 corresponds to claim 1 of auxiliary request 3 with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2', and claim 3 of auxiliary request 3-1 corresponds to claim 5 as granted. Only some reference signs in claim 3 have been deleted.

XXVI. Claim 1 of auxiliary request 3-1* corresponds to claim 1 of auxiliary request 3* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2'.

XXVII. Claim 3 of auxiliary request 3a corresponds to claim 5 as granted. Only some reference signs have been deleted.

XXVIII. Claim 1 of auxiliary request 3a* has the features 1.1', 1.2', 1.3, 1.5, 1.7, 1.6, 1.4a', 1.8, 1.9, 1.4b'' (in this order), wherein feature 1.9 has the following wording:

1.9 *the relative motion being in a direction perpendicular to the one dimension of the digital printing plate, the light exposure unit being moved above the digital printing plate,*

XXIX. Claim 3 of auxiliary request 3a-1 corresponds to claim 5 as granted. Only some reference signs have been deleted.

XXX. Claim 1 of auxiliary request 3a-1* corresponds to claim 1 of auxiliary request 3a* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in

feature 1.2'.

XXXI. Claim 4 and 5 of auxiliary request 4 corresponds to claims 5 and 6 as granted.

XXXII. Claim 1 of auxiliary request 4* has the features 1.1, 1.2, 1.3, 1.4a, 1.4b' and 1.10 (in this order), wherein feature 1.10 has the following wording:

1.10 *wherein the producing light energy comprises using the light source being divided into two sections (621, 622) that illuminate different sized areas, including a smaller area section and a larger area section and wherein at least one section's light output intensity can be controlled independently of the other section's light output intensity and wherein the illumination intensity of each section can be controlled independently.*

XXXIII. Claims 4 and 5 of auxiliary request 4-1 correspond to claims 5 and 6 as granted.

XXXIV. Claim 1 of auxiliary request 4-1* corresponds to claim 1 of auxiliary request 4* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2.

XXXV. Claims 4 and 5 of auxiliary request 5 correspond to claims 5 and 6 as granted.

XXXVI. Claim 1 of auxiliary request 5* corresponds to claim 1 of auxiliary request 4* with the additional feature 1.11a after feature 1.10:

1.11a *wherein the section illuminating the smaller area*

section is capable of generating a higher output intensity than the section illuminating the larger area section.

XXXVII. Claims 4 and 5 of auxiliary request 5a correspond to claims 5 and 6 as granted.

XXXVIII. Claim 1 of auxiliary request 5a* corresponds to claim 1 of auxiliary request 4* with the additional feature 1.11b after feature 1.10:

1.11b *wherein the smaller area section is capable of generating a higher output intensity than the larger area section.*

XXXIX. Claims 4 and 5 of auxiliary request 5a-1 correspond to claims 5 and 6 as granted.

XL. Claim 1 of auxiliary request 5a-1* corresponds to claim 1 of auxiliary request 5a* with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2.

XLI. Respective claims 5 and 6 of auxiliary requests 6, 6-1, 7 and 7-1 correspond to claims 5 and 6 as granted. Only some reference signs have been deleted.

XLII. Claim 1 according to auxiliary request 8 has the features 1.1', 1.2', 1.3, 1.5, 1.7, 1.6', 1.4a', 1.8 and 1.4b''' (in this order), wherein feature 1.4b''' has the following wording:

1.4b''' *such that curing can produce printing features on the plate (703) that can be switched to have either flat tops or round tops according to the illumination*

intensity output by the light exposure unit (1609; 1709), flat tops at the second illumination intensity or round tops at the first illumination intensity.

XLIII. Claim 1 of auxiliary request 8-1 corresponds to claim 1 of auxiliary request 8 with the wording "the light energy being produced on part of the printing plate" before the term "using a light exposure unit" in feature 1.2'.

XLIV. Respective claim 3 of auxiliary requests 8, 8-1 and 8a corresponds to claim 5 as granted. Only some reference signs have been deleted.

XLV. Claim 1 of auxiliary request 8a* has the following wording:

1.1' *A method of curing a digital printing plate (703) having photo-curable material underneath an ablatable layer including revealed areas, the method comprising:*
1.2' *producing light energy at a wavelength or wavelengths suitable for curing in part the photo-curable material through the revealed areas using a light exposure unit (1609; 1709) capable of generating at least a first illumination intensity and a second illumination intensity,*
1.3 *the second illumination intensity being higher than the first illumination intensity,*
1.5 *wherein the digital printing plate is placed on a flatbed,*
1.7 *wherein the light exposure unit (1609; 1709) covers one dimension of the digital printing plate, and*
1.6 *wherein the light exposure unit (1609; 1709) comprises a plurality of light emitting diodes, LEDs, and a power supply therefor; and*
1.4a' *curing in part the photo-curable material by*

selecting the first illumination intensity or selecting the second illumination intensity and
1.8 *while producing relative motion between the light exposure unit (1609; 1709) and the digital printing plate,*
1.9 *the relative motion being in a direction perpendicular to the one dimension of the digital printing plate, the light exposure unit being moved above the digital printing plate,*
1.4b''' *such that curing can produce printing features on the plate (703) that can be switched to have either flat tops or round tops according to the illumination intensity output by the light exposure unit (1609; 1709), flat tops at the second illumination intensity or round tops at the first illumination intensity.*

XLVI. The wording of the lower-ranking auxiliary requests is not relevant for the present decision.

XLVII. The parties' submissions can be summarised as follows:

(a) The opponent mainly argued that granted claims 1, 5 and 6 did not comply with the requirements of Article 76(1) EPC. This issue was relevant to all sets of claims filed before October 2025, i.e. to the auxiliary requests without "*".

The sets of claims according to the auxiliary requests filed with the letter received on 13 October 2025 should not be admitted into the appeal proceedings under Article 13(2) RPBA.

(b) The patent proprietor argued that the requirements of Article 76(1) EPC were met for all requests.

The sets of claims filed with the letter received

on 13 October 2025 should be admitted into the appeal proceedings as they were a response to a new line of argumentation brought forward by the board in its communication pursuant to Article 15(1) RPBA and addressed the opponent's objections against dependent claims 5 to 7 as granted by deleting the corresponding dependent claims.

Reasons for the Decision

1. The invention according to the opposed patent

The opposed patent concerns a method for curing digital printing plates made of or having photo-curable material, e.g. a material curable by light in the ultraviolet range or some other range of wavelengths, see paragraph [0002] of the opposed patent.

According to the description of the patent in suit, a digital plate is a plate that is exposed to imaging data by ablating a mask material that is on the plate, e.g. by exposure to laser radiation in an imaging device, see paragraph [0004] of the opposed patent.

A conventional analog plate is a plate that is exposed to imaging data by exposing a photographic film according to the imaging data, and then using the film to form a mask during exposure to curing radiation, see paragraph [0005] of the opposed patent.

Irrespective of the way imaging data is transferred to the plate, the plate needs light, e.g. UV light, for curing. After curing, the non-cured portions of the polymer are removed so that the cured printing plate has printing features. Normally printing features on digital printing plates have rounded surfaces, i.e. a

round top as a result of the presence of oxygen in the photo-curable material, see paragraphs [0006], [0007], [0078] to [0082], [0142] to [0149] of the opposed patent.

The opposed patent uses the observation that digital printing plates with printing features having flat tops can be obtained by using a higher illumination intensity when curing the printing plate so that round tops or flat tops can be produced on a digital plate at an operator's choice.

2. Claim 1 as granted - added subject-matter, Article 100(c) EPC in combination with Article 76(1) EPC

2.1 According to the opposition division, claim 1 as granted would be interpreted by the skilled person as requiring a curing by the first illumination intensity or the second illumination intensity, which meant that no switching was required, the curing could take place using e.g. only the first (or the second) illumination intensity (point 28 of the Reasons of the decision under appeal). In contrast, the invention as described in the parent application, see e.g. page 2, lines 8 to 11, was related to controlling the shape of the three dimensional printing features, so that round tops or flat tops could be produced on a digital plate at an operator's choice. The feature relating to such control was an essential technical feature (point 29 of the Reasons of the decision under appeal).

The opposition division held that the subject-matter of claim 1 related to an unallowable intermediate generalisation of the disclosure in the parent application as originally filed, because granted

claim 1 omitted a feature related to a control of the top shape of the printing features (point 30 of the impugned decision) and the feature of producing light energy for curing the photo-curable material *on part* of the printing plate (point 34 of the Reasons of the impugned decision).

Regarding granted claims 5 and 6 the opposition division held that there was no issue with added subject-matter (points 59 and 60 of the Reasons of the decision under appeal).

2.2 Patent proprietor's view

2.2.1 The patent proprietor argued that the claimed method was not merely requiring a curing of the photo-curable material by a first illumination intensity or a second illumination intensity (as argued by the opposition division in point 28 of the Reasons of the impugned decision).

The invention related to curing the photo-curable material of a digital printing plate in order to produce printing features having round tops or flat tops depending on the applied illumination intensity of a light exposure unit. The inventor had found that the curing process of the photo-curable material of the digital printing plate was a "dynamical process resulting from a balance of polymerization chains being triggered by the illumination light and the inhibition of polymerization by oxygen in the photo-curable material", see paragraphs [0146] to [0147] of the opposed patent or page 25, lines 5 to 10 of the patent application as filed.

When illuminating with a low illumination intensity

(i.e. the "first intensity" in claim 1), enough oxygen could diffuse into the digital printing plate so that the polymerization was sufficiently inhibited to produce round tops. When illuminating the digital printing plate with a higher illumination intensity (i.e. the "second intensity" in claim 1) than the first illumination intensity, more polymerization chains were created while the amount of oxygen entering the plate stayed the same. Accordingly, under the second (higher) illumination intensity, the oxygen amount was not enough to sufficiently inhibit polymerization, so that flat tops were produced. The dynamical process could thus be controlled by the applied illumination intensity.

Claim 1 implicitly included a selection (see feature 1.4a) from the first illumination intensity or the second illumination for purposefully producing printing features with round tops or flat tops, see also paragraph [0088] of the opposed patent. Hence, claim 1 included a step of selecting one of the two mandatory required intensities to produce the desired top shape and required controlling of the light exposure unit such that, depending on the desired top shape, the corresponding illumination intensity was output.

2.2.2 Claim 1 was thus implicitly restricted to photo-curable materials that were "such that flat or round tops are actually produced according to the illumination intensity selected or chosen by the operator", because it defined a digital printing plate having this limitation. Claim 1 defined that the same printing plate and the same photo-curable material could be cured by the first or second illumination intensity, and that when cured with the first illumination

intensity, round tops were obtained, and when cured with the second illumination intensity, flat tops were obtained, see features 1.4a and 1.4b and also page 13, line 24 to page 14, line 2 of the parent application as filed. Hence, the photo-curable material of claim 1 as granted was such that the method according to claim 1 was possible.

The wording of claim 1 as granted did not encompass methods in which the operator would not have the choice between round and flat tops depending on the illumination intensity. Features 1.2 and 1.4a inherently included a selection or control step for choosing one of the intensities, namely a decision whether to cure the same plate with the first or second illumination intensity. Feature 1.4b causally linked ("such that", "according to the illumination intensity output") the selection of feature 1.4a (i.e. the selected illumination intensity) to the specific top shape of the printing features.

2.2.3 The interpretation of the term "or" in feature 1.4a as implying mutually exclusive alternative methods was not technically justified. This was not the understanding the skilled person would apply. Claim 1 did not encompass methods with flat tops produced for both intensities or with round tops produced for both intensities. This was excluded by virtue of the claimed wording.

When interpreted in light of the description and drawings, as required by G 1/24, the skilled person understood the "or" to denote selectable options within a single method, not distinct alternatives.

In the patent proprietor's view, the requirement of

G 1/24 that the description always had to be consulted should also be applied when examining whether subject-matter extended beyond the disclosure as originally filed (Articles 76(1), 123(2) EPC) as there should be a uniform concept of disclosure (see G 2/10). Therefore, features 1.4a and 1.4b should be understood as disclosed in multiple passages of the parent application (page 2, lines 8 to 11; page 4, line 24 to page 5, line 3; page 10, lines 22 to 27; page 11, lines 3 to 17; page 13, line 12 to 14; page 14, lines 3 to 4; page 15, lines 28 to 30; claim 12 as filed). Claim 1 should be interpreted only in agreement with the disclosure provided therein.

2.2.4 The wording of original claim 12 of the parent application did not require a switching of the illumination intensities, i.e. a switching from the first intensity to the second intensity or vice versa, as alleged by the opponent. This was confirmed by page 14, lines 3 and 4, which concerned embodiments with curing at the first or at the second illumination intensities. Other embodiments concerned illumination at the second intensity and then at the first intensity, see page 14, lines 5 to 7 or page 16, line 10 to 11, Figure 6 and the description associated thereto.

The aspect of "switching", i.e. the term "can be switched to have either flat tops or round tops" in claim 12 of the parent application related to the top shape of the printing features, which meant that the desired shape was produced in accordance with the applied illumination intensity. The expression "printing features ... that can be switched" was technically understood to mean that flat or round tops were produced according to the illumination intensity

output by the light exposure unit. Therefore, "switching" technically meant nothing more than that an operator or a control system applied either a lower or a higher illumination intensity to deliberately produce round or flat top features.

As explained, selecting one of the first or second intensities was implicitly included in granted claim 1. Hence, features 1.4a and 1.4b of claim 1 as granted and claim 12 of the parent application reflected the same technical teaching, namely the operator's or system's ability to select between two illumination intensities with predictable and reproducible results on the same photo-curable material.

2.2.5 With shifting the wording to "curing in part the photo-curable material" (feature 1.4a) on the printing plate in granted claim 1, the skilled person was not confronted with any other technical teaching than from the wording in claim 12 of the parent application, i.e. "curing the photo-curable material on part of the printing plate".

Digital printing plates were exposed to imaging data through openings in a mask material on the plate. Thus, the part of the printing plate below the opening was cured, while the part still covered by the mask was not cured, see paragraph [0004] and Figure 3 of the patent.

Hence, "curing the photo-curable material on part of the printing plate" was technically the same as "curing in part the photo-curable material" on the plate. The wording "on part" in claim 12 of the parent application did not provide any limitation with respect to the width, length or thickness of the printing plate, nor

did it exclude that the entire printing plate was illuminated and cured.

2.2.6 Regarding dependent claim 5 the patent proprietor argued that page 18, lines 24 to 30 or page 19, lines 18 to 27 of the description of the parent application did not describe a laser imaging unit as an essential feature, but rather as a possible embodiment, see also page 20, lines 3 to 11; page 1 lines 24 to 25; page 26, lines 15 to 18 ("e.g., by laser ablating"). The skilled person would be aware of other imaging methods to produce the mask of the digital printing plate, e.g. ink jet printing.

With respect to dependent claim 6, the patent proprietor pointed out that a movable light source was optional, see page 3, lines 18 to 29; page 5, lines 4 and 5; page 18, lines 15 and 16; page 9, lines 10 to 20 and page 2, lines 22 and 23 of the description of the parent application.

2.3 Opponent's view

2.3.1 For the opponent, features 1.4a and 1.4b did not imply any selection step for purposefully producing printing features with rounds tops or flat tops. It was not clear where such selection would take place (in the mind of a user or on a user interface). Claim 1 did not refer to a control step, either. It was at most implicit in claim 1 that a light exposure unit was used that could emit two illumination intensities, a first intensity that would produce round tops and a second intensity that would produce flat tops. Feature 1.4a defined that one of the two alternative illumination intensities was used during curing and feature 1.4b defined the respective result. The apparatus might thus

be programmed to work only at one of the two intensities for a particular type of printing plates.

For the opponent, original claim 12 of the parent application was closest to granted claim 1. This claim required a switching according to the illumination intensity output by the light exposure unit. According to the opponent, this seemed to imply that some printing features of the plate could have flat tops and some other features of the plate could have round tops by switching between different intensities during curing. The wording of claim 12 implied that in operation, one switched from the first illumination intensity to the second illumination intensity or vice versa. Reference was made to page 13, lines 8 to 14 of the description of the parent application.

Hence, the concept of switching was not in claim 1 as granted, which was therefore not based on claim 12 of the parent application.

Switching was also mentioned on page 4, line 24 to page 5, line 3; page 10, lines 22 to 27; page 11, lines 3 to 6; page 11, lines 13 to 17; page 15, lines 28 to 30 of the description of the parent application. The apparatus claims of the parent application had a control system to control the light exposure unit (i.e. to perform said switching). However, this aspect was no longer reflected in granted claim 1.

2.3.2 There was no basis for the omission of the term "on part" used in claim 12 of the parent application. According to granted claim 1, part of the material was cured while according to claim 12, light energy was produced on part of the plate such that curing could

produce printing features that could be switched to have either flat tops or round tops according to the illumination intensity. The technical meaning was not the same.

The term "on part of the plate" has been used in the parent application as filed, see page 2, lines 20 and 25; page 4, line 27; page 10, lines 8, 18, 20-21, 23 and 29; page 11, line 9; page 18, lines 24 to 30 of the description and Figures 5 to 7 and 16 to 18.

2.3.3 The features of claim 5 were only disclosed in combination with a laser imaging unit, see page 18, lines 24 to 30 and page 19, lines 18 to 27 of the description of the parent application as filed. Page 20, lines 3 and 4; the paragraph bridging pages 13 and 14; page 26, lines 15 to 18; pages 1, lines 18 or 19 of the description of the parent application do not provide a basis for claim 5.

The features of claim 6 were only disclosed in combination with relative motion in a direction perpendicular to the one dimension covered by the light exposure unit, see page 3, lines 21 to 23 of the description of the parent application as filed. Neither page 3, lines 18 to 29; page 2, lines 22 and 23; page 5, lines 4 and 5 or page 9, lines 10 to 13 of the description nor Figures 15 and 16 provide a basis for claim 6.

2.4 Board's assessment

The subject-matter of claims 1, 5 and 6 extends beyond the content of the earlier application as filed so that the ground for opposition under Article 100(c) EPC prejudices the maintenance of the opposed patent as

granted.

2.4.1 The wording of granted claim 1 is directed to a method using an apparatus and a digital printing plate (feature 1.1). According to the description of the patent in suit, a digital printing plate is a plate that is exposed to imaging data by ablating a mask material that is on the plate, e.g. by exposure to laser radiation in an imaging device, see paragraph [0004] of the opposed patent.

The apparatus according to claim 1 has a light exposure unit for producing light energy at a wavelength suitable for curing photo-curable material on said digital printing plate, the light exposure unit being capable of generating light of two illumination intensities (feature 1.2).

Implicitly, the apparatus has to be arranged such as to allow oxygen to enter the photo-curable material. For example, an apparatus for curing a digital printing plate (without any oxygen barrier layer or with an oxygen barrier allowing diffusion of a sufficient amount of oxygen into the photo-curable material) which includes a transparent support plate in immediate contact with the illuminated surface of the printing plate would generally not produce round tops, because the support plate of the apparatus inhibits oxygen from entering the photo-curable material.

It is undisputed that the parent application as originally filed discloses such a curing apparatus.

2.4.2 The board notes that the terms "flat tops" and "round tops" were used in granted claim 1 so that they are not objectionable under Article 84 EPC in the opposition

(appeal) proceedings.

However, the opposed patent does not give a precise definition of what is meant by "round" and "flat", except for paragraph [0082] mentioning "round shaped structures which stay at slightly below the original surface level". That paragraph also states that Figure 3 shows a "simple cross-section of a simple example printing pattern with round tops that results from UV exposure through a laser ablated film by UV light from a UV source", while Figure 2 shows flat tops, see paragraph [0081] of the opposed patent.

As pointed out by the patent proprietor, the formation of a round top is related to the presence of oxygen during the UV curing, see paragraphs [0078] to [0082] and [0142] to [0149] of the opposed patent.

Oxygen acts as an inhibitor to the polymerization during curing, see paragraph [0078]. Oxygen atoms in surface regions of the layer of photo-curable material result in a "kind of melting of the halftone dots", see paragraph [0080] of the opposed patent. In other words, if no (or relatively little) oxygen molecules are present during curing, the photo-curable material is cured up to the original surface level of the uncured layer of photo-curable material. As a result, after the removal of the uncured portions of the photo-curable material, a "flat" top is obtained. In the presence of more oxygen molecules, the photo-curable material is not cured up to said original surface level. As a result, after the removal of any uncured portions of the photo-curable material, a "round" top is produced. A sufficient amount of oxygen entering the photo-curable material is thus mandatory for providing round tops.

According to paragraphs [0147] to [0149] of the opposed patent, the effect of an increased light intensity can lead "to more activation of the starter radicals", while the "number of chains finished by oxygen remains the same as with lower intensity". In the board's understanding, a higher intensity therefore lowers the oxygen's effect of producing "round" tops.

2.4.3 Feature 1.4a of claim 1 includes the step of choosing or selecting one of the at least two illumination intensities that can be generated by the light exposure unit in order to perform a curing, as also pointed out by the patent proprietor. Feature 1.4b then defines the result of the curing.

As pointed out by the opponent, method claim 1 defines two alternative methods: a first one with curing in part the photo-curable material by the first illumination intensity such that curing can produce printing features on the plate to have round tops at the first illumination intensity, and a second one with curing in part the photo-curable material by the second illumination intensity such that curing can produce printing features on the plate to have flat tops at the second illumination intensity.

For the board, this is a technically meaningful reading of claim 1. The skilled person would understand claim 1 in this way.

According to granted claim 1, a printing plate with a given photo-curable material is cured. Claim 1 leaves the type of photo-curable material open and is silent about any relationship between the two light illumination intensities and the photo-curable material.

Hence, according to the wording of features 1.4a and 1.4b, the printing plate might be cured at the first illumination intensity to produce round tops. This does however not exclude that for the same digital printing plate with the given photo-curable material the second illumination intensity would also produce round tops. Similarly, the printing plate might be cured at the second illumination intensity to produce flat tops. Again, this does not exclude that for the same digital printing plate with the given photo-curable material the first illumination intensity would also produce flat tops.

In the claimed method, a curing apparatus allows to select or choose between two illumination intensities to cure a digital printing plate. Two methods are encompassed by the wording to claim 1:
- curing the digital printing plate using/selecting the lower first illumination intensity whereby round tops are produced (while it is not excluded that round tops are also produced when using the higher second illumination intensity); and
- curing the digital printing plate using the higher second illumination intensity whereby flat tops are produced (while it is not excluded that flat tops are also produced when using the lower first illumination intensity).

In other words, granted claim 1 encompasses methods in which the operator would not have the choice between round and flat tops depending on the illumination intensity, as pointed out by the opponent.

2.4.4 An amended claim the wording of which is not literally included in the (earlier) application as originally filed - as is the case here - must generally be

interpreted by using a mind willing to understand and by consulting the description and the drawings, prior to assessing whether the claimed subject-matter can be directly and unambiguously derived from the (earlier) application as filed. The board agrees with the corresponding two-step approach applied in T 2048/22, Reasons 1.2 and T 873/23, Reasons 1.6.1.

The patent proprietor referred to G 1/24 and to several passages in the description to support its different, narrower interpretation of claim 1, according to which a "selection" or "switching" step between two types of shapes of the printing features of the same printing plate was included, see point 2.2.3 above. The board notes that the patent proprietor indicated passages in the parent application as originally filed. The corresponding passages can be found in paragraphs [0008], [0038], [0072], col. 9, lines 31 to 52, paragraphs [0085], [0089], col. 13, lines 18 to 22 of the opposed patent, which should be used when interpreting the meaning of claim 1 as granted.

The board does not agree with the patent proprietor's view. As held by many boards following G 1/24, the consultation of the description does not mean that restrictive features that are contained in specific embodiments in the description can limit the wording of the claims, see e.g. T 1232/23, Reasons 2.10.3; T 1465/23, Reasons 2.4; T 1846/23, Reasons 1.5.4; T 1069/23, Reasons 2.3.1; T 1351/23, Reasons 3.2.2; T 412/24, Reasons 3.1.1; T 2034/23, Reasons 3.6.2; T 1402/24, Reasons 2.5.2. The board is of the view that also the more general statement in paragraph [0008] of the patent relating to the background of the invention and merely pointing to an advantageous method and apparatus would not prompt the skilled person to a

narrower interpretation of claim 1.

The board consulted the description when interpreting claim 1 and interpreted it in a broad, technically reasonable manner. However, for this interpretation, there is no basis in the earlier application as filed, as set out below.

2.4.5 The parent application as originally filed concerns *inter alia* a method in which a digital printing plate is cured with said apparatus.

According to the parent application, it is the operator's choice which type of printing features is produced by selecting the appropriate illumination intensity, see e.g. parent application, page 2, lines 8 to 11; page 4, line 24 to page 5, line 9; page 10, lines 18 to 27; page 11, lines 3 to 17; page 13, lines 12 to 14; page 15, lines 28 to 30; original claim 12. In particular, the passages of page 2, lines 8 to 11 or page 4, lines 24 to page 5, line 9 of the section of the description entitled "Object of the Invention" teach that a selection of the light illumination intensity is done e.g. by an operator to obtain the desired top shape.

Hence, the photo-curable material must be such that the first illumination intensity produces printing features with "round tops" and the second illumination intensity produces printing features with "flat tops". In other words, the disclosure of the parent application implicitly requires some restrictions with respect to the photo-curable material of the digital printing plate. For a given apparatus providing given first and second illumination intensities, the photo-curable material must be such that flat or round tops are

actually produced according to the illumination intensity selected or chosen by the operator.

In other words, according to the parent application, the apparatus with a light exposure unit capable of generating two illuminations intensities and the photo-curable material of the digital printing plate are adapted to each other (and cannot be arbitrary) so that the control of the top shape of the printing features is obtained.

Hence, the parent application as a whole teaches that an apparatus as described (see point 2.4.1 above) and a digital printing plate with an adequate photo-curable material are provided. The operator then selects the first or the second illumination intensity in accordance with the top shape (round or flat) of the printing plate that is desired to be obtained, see e.g. page 10, lines 17 to 21 of the description of the parent application.

2.4.6 The opponent considers claim 12 of the parent application as originally filed as the closest basis for granted claim 1.

In its statement setting the grounds of appeal (points 14. to 16.) or its reply to the patent proprietor's statement setting out the grounds of appeal (point 12.), the opponent appears to argue that, according to the wording of claim 12, printing features with round tops are produced on a first portion of the printing plate using the first (lower) illumination intensity) and printing features with flat tops are produced on a second portion using the second (higher) illumination intensity, which would mean that during operation the illumination intensity is switched from

the first to the second or from the second to the first illumination intensity. Reference was made by the opponent to the example shown in Figure 6 of the parent application.

The board opines, however, that, while such a method might be encompassed by the wording of claim 12, the latter is in fact not limited to this type of method.

Page 16, first paragraph (and page 14, lines 5 to 7) of the description of the parent application concerns an embodiment with the illumination intensity being switched during operation. However, in this example, upper parts of photo-curable material are cured at the second illumination intensity and lower parts are cured at the first illumination intensity so that flat tops are generated as an end result, as also pointed out by the patent proprietor. This embodiment might be realised by the device shown in Figure 6 of the parent application. However, in this example, there is no switching of illumination intensities for the second section 622 as explained on page 15, lines 26 to 30.

Moreover, strictly speaking, the wording of claim 12 does not require that the illumination intensities are "switched" or changed during curing, but only states that the "curing can produce printing features on the plate that can be switched to have either flat tops or round tops according to the illumination intensity output by the light exposure". The board accepts the patent proprietor's view that this wording is technically understood to mean that flat or round tops are produced according to the illumination intensity output by the light exposure unit, while "switching" technically means that an operator or a control system applies either a lower or a higher illumination

intensity on a same digital printing plate to deliberately produce round or flat top features on said printing plate.

In other words, the method of claim 12 of the parent application also implies the aspect of controlling the top shapes of the printing features on a same printing plate by selecting the first or second illumination intensity, as pointed out in point 2.4.5 above.

2.4.7 There is a disagreement among the parties whether this essential aspect of the invention is a part of the method according to claim 1 as granted.

In view of the board's interpretation of claim 1, see points 2.4.1 to 2.4.4 above, claim 1 as granted of the opposed patent does not include said aspect, so that the claim is not restricted accordingly and encompasses subject-matter (see point 2.4.3 above) which is nowhere described in the parent application as originally filed.

2.4.8 Thus, the board does not share the patent proprietor's view that a "selection" or "switching" step between two types of shapes of the printing features of the same printing plate is explicitly included in claim 1. Hence, as also held by the opposition division, granted claim 1 does not include the concept of controlling the top shapes of the printing features on a same printing plate by selecting the first or second illumination intensity.

Omitting this essential aspect, which is included in the relevant independent claims of the parent application and presented throughout its description as a core feature of the invention, leads to a broadening

of the claim which therefore encompasses subject-matter that is not originally disclosed in the parent application as originally filed. Consequently, the omission amounts to an unallowable amendment and to an extension beyond the content of the parent application as filed.

2.4.9 With respect to the term "for curing the photo-curable material on part of the printing plate" in claim 12 of the parent application as originally filed, the board agrees with the patent proprietor that the term "digital printing plate" used in claim 1 as granted implies that the photo-curable material on one part of the printing plate is cured, namely the material exposed by the ablated mask material. The photo-curable material covered by mask material is not cured and is removed, as explained in general e.g. in paragraph [0006] of the opposed patent. Therefore, regarding the feature in granted claim 1 "curing in part the photo-curable material", the skilled person is apparently not confronted with any technical teaching not disclosed in the parent application as originally filed.

In other words, the board accepts that "curing the photo-curable material on part of the printing plate" is technically the same as "curing in part the photo-curable material on the plate".

2.4.10 With respect to dependent claims 5 and 6, the board is of the view that the opponent is correct. The features of said dependent claims were not disclosed in the claims of the parent application as originally filed. They were taken from the description, but from a specific technical context.

Claim 5 and 6 as granted constitute unallowable

intermediate generalisations of specific examples provided in the parent application as originally filed.

(a) Claim 5

The step of transferring imaging data to a part of the printing plate, which corresponds to the formation of revealed areas in an ablatable layer (see e.g. paragraph [0004] of the parent application), is performed in a specific way, namely using an "imaging unit having imaging elements". Such device is exclusively disclosed on page 18, lines 25 to 28 or page 19, lines 24 to 27 of the description of the parent application as a "laser imaging unit", i.e. with a mask material ablated by exposure to laser radiation, see paragraph [0004] of the parent application. The parent application as originally filed does not (implicitly) disclose any imaging unit of granted claim 5 other than a laser imaging unit.

Page 20, lines 3 to 11 of the description of the parent application only mentions "inline imaging and curing" and states that the "invention is not limited to combining of the imaging and curing in one exposure apparatus". Imaging elements are not mentioned. The board is not convinced that the skilled person would derive the specific arrangement of granted claim 5 from this passage. Page 1, lines 24 and 25 or page 26, lines 15 to 18 do not define an imaging unit that is part of a curing apparatus.

(b) Claim 6

In all examples of the parent application as filed with a light exposure unit covering one dimension of the printing plate, this light exposure unit has to move

with relative motion in a direction perpendicular to said one direction, see Figures 15 to 18 and page 19, lines 5 to 22 of the parent application. Page 3, lines 3 to 23 of the parent application is apparently directed to these embodiments. Page 2, lines 22 to 28; page 5, lines 4 to 9 or page 18, lines 15 to 17 do not concern embodiments with the light exposure unit covering one dimension of the printing plate. The passage on page 9, lines 10 to 19 contains merely the reference to Figures 15 to 18.

3. Auxiliary requests 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 3, 3-1, 3a, 3a-1, 4, 4-1, 5, 5a, 5a-1, 6, 6-1, 7, 7-1, 8, 8-1, 8a

3.1 None of auxiliary requests 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 3, 3-1, 3a, 3a-1, 4, 4-1, 5, 5a, 5a-1, 6, 6-1, 7, 7-1, 8, 8-1, 8a overcomes both the objections raised against the dependent claims 5 and 6 as granted.

In more detail, the wording of granted claim 5 is used in respective claim 5 of auxiliary requests 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 6, 6-1, 7, 7-1, in respective claim 3 of auxiliary requests 3, 3-1, 3a, 3a-1, 8, 8-1, 8a, and in respective claim 4 of auxiliary requests 4, 4-1, 5, 5a, 5a-1.

The wording of granted claim 6 is used in respective claim 6 of auxiliary request 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 6, 6-1, 7, 7-1, in respective claim 1 of auxiliary requests 3 and 3-1, 8, 8-1, in respective claim 5 of auxiliary requests 4, 4-1, 5, 5a, 5a-1.

In addition, indicating in claim 1 that a digital printing plate has "photo-curable material underneath an ablatable layer including revealed areas" and that

the photo-curable material is cured "through the revealed areas" (features 1.1' and 1.2', see e.g. auxiliary request 0b)or the indication "the light energy being produced on part of the printing plate" (see e.g. auxiliary request 0b-1) only specify what a skilled person would understand from curing any digital printing plate. These amendments do not overcome the objections raised against granted claims 5 and 6.

3.2 In view of this, the question of the admittance of some of said auxiliary requests (as raised by the opponent) can be left open.

3.3 As an aside, as pointed out during the oral proceedings before the board, the sets of claims according to the lower-ranking auxiliary requests 8a-1, 9, 9-1, 10, 10a, 10a-1 also include claims having the wording of at least one of granted claims 5 and 6 and thus also introduce subject-matter extending beyond the parent application as originally filed.

4. Auxiliary requests 0*, 0a*, 0a-1*, 0b*, 0b-1*, 1*, 1-1*, 2*, 2-1*, 3*, 3-1*, 3a*, 3a-1*, 4*, 4-1*, 5*, 5a*, 5a-1* - admittance under Article 13(2) and (1) RPBA

4.1 According to Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA, is, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

In the present case, auxiliary requests 0*, 0a*, 0a-1*, 0b*, 0b-1*, 1*, 1-1*, 2*, 2-1*, 3*, 3-1*, 3a*, 3a-1*,

4*, 4-1*, 5*, 5a*, 5a-1* were submitted with a letter received on 13 October 2025, i.e. after the board's communication issued on 5 March 2025.

4.2 The patent proprietor argued that the expression "curing in part the photo-curable material by selecting the first illumination intensity or selecting the second illumination intensity" (feature 1.4a') corresponded to the disclosure of claim 12 of the parent application. Basis was found on page 14, lines 3 to 4 and lines 25 to 29 of the description of the parent application.

The auxiliary requests with "*" were filed in view of points 11.4.3, 11.4.4, 11.4.5 and 14.2 of the board's preliminary opinion and were amended to address these points where applicable.

Under points 11.4.2 and 11.4.3, the board expressed its view that the subject-matter of granted claim 1 extended beyond the content of the parent application and under point 13.1.2, the board expressed the opinion that the additional amendment according to feature 1.4a' would not overcome the objection. This was addressed by introducing amended features 1.4b' and 1.4b''. The amendments were supported by original claim 12; page 2, lines 8 to 11; page 4, line 24 to page 5, line 3; page 10, lines 22 to 27; page 11, lines 3 to 17; page 13, lines 12 to 14; page 15, lines 21 to 30 of the parent application as originally filed. The amendments made in feature 1.4b' and 1.4b'' excluded the board's broader interpretation of claim 1.

The requests were to be admitted because exceptional circumstances applied justifying admittance at this stage of the appeal proceedings. The filing of these

requests was justified because they were a response to a "new line of argument" put forward by the board under points 11.4.2, 11.4.3 and 13.1.2 of the preliminary opinion, which significantly differed from the opponent’s lines of argument in the notice of opposition. Although the objection of the board related to the same feature the opponent objected to, the reasoning the board provided differed "significantly from the opponent's reasoning". Reference was made to point 11.4.3 of the board's communication. The board's understanding of claim 1 as granted and claim 12 of the parent application differed from that of the opponent.

4.3 The board does not agree that there are exceptional circumstances and agrees with the opponent that the board did not provide a new line of reasoning.

As early as in the notice of opposition, the opponent addressed the issue that claim 1 could be interpreted broadly so that one illumination intensity is used during curing, while the original disclosure described a control of the top shape of printing features, see e.g. the notice of opposition, page 6, line 5 to page 7, line 34.

This was discussed during the oral proceedings before the opposition division and in the impugned decision.

As already pointed out above, the patent proprietor's and opponent's argumentations were maintained in the appeal proceedings.

The passages of the board's preliminary opinion cited by the patent proprietor do not introduce a new line of argumentation, but merely address the patent proprietor's argumentation in its statement setting out

the grounds of appeal and its reply to the opponent's statement setting out the grounds of appeal. The board only explained in its own words why it preliminarily did not follow the patent proprietor's argument, e.g. the argument that a control of the top shape of the printing features was already implicitly included the claimed method, and why it found the opponent's arguments more convincing.

4.4 Moreover, the amendments made to features 1.4a' and 1.4b'/1.4b'' do *prima facie* not overcome the objection raised against claim 1 as granted and give raise to new objections.

Feature 1.4a' defines a selection between two alternative illumination intensities while feature 1.4b'/1.4b'' indicates the effect of this choice. Hence, *prima facie*, the wording of claim 1 still encompasses methods without the concept of controlling the top shapes of the printing features on a same printing plate (at an operator's choice) by selecting the first or second illumination intensity. The wording of claim 1 still includes embodiments in which the operator has no choice between two shapes of printing features. Claim 1 is not limited to a selection between two mandatory defined illumination intensities with a specific purpose, namely to produce round or flat tops, contrary to the patent proprietor's view.

Moreover, as pointed out by the opponent, it is *prima facie* not clear whether replacing "or" by "and" in feature 1.4b'/1.4b'' now defines that the printing plate must have both types of printing features, i.e. round tops in a first portion and flat tops in a second portion.

It is also questionable whether the amendments are supported in the passages indicated by the patent proprietor, because these passages possibly reflect what is disclosed in original claim 12 of the parent application, but do not contain the wording of features 1.4b' or 1.4b''.

In view of the above considerations, the board decided during the oral proceedings not to take auxiliary requests 0*, 0a*, 0a-1*, 0b*, 0b-1*, 1*, 1-1*, 2*, 2-1*, 3*, 3-1*, 3a*, 3a-1*, 4*, 4-1*, 5*, 5a*, 5a-1* into account under Articles 13(2) and (1) RPBA.

5. Auxiliary request 8a* - admittance under Article 13(2) and (1) RPBA

5.1 Auxiliary request 8a* was filed with the letter received on 13 October 2025 and is based on auxiliary request 8a, which was filed with the patent proprietor's reply to the opponent's statement setting out the grounds of appeal and which differed from auxiliary request 8 only by the inclusion of feature 1.9.

In claim 1 of auxiliary request 8a*, the term "*and a power supply therefor*" was added (see feature 1.6 in comparison to feature 1.6' in auxiliary requests 8 and 8a) and previous dependent claims 3 and 4 were deleted.

5.2 Issues with granted dependent claims 5 to 7 had already been brought forward on page 8 of the notice of opposition. They were repeated in the opponent's statement setting out the grounds of appeal, see points 22 to 24.

The board notes, as pointed out by the patent proprietor, that the opposition division stated in its preliminary opinion (point 85) dated 18 March 2022 *inter alia* that it considered auxiliary request 8 allowable. It also expressed its opinion that granted dependent claims 5 to 7 did not introduce subject-matter extending beyond the content of the parent application as originally filed (see points 20 to 23).

It was not until in the letter dated 24 November 2022 that the opponent objected for the first time to the omission of the term "*a power supply therefor*", see page 23, lines 11 to 13, in the context of auxiliary request 1. The objection was repeated in the reply to the patent proprietor's statement setting out the grounds of appeal, page 29, point 121.

As the opposition division held that auxiliary request 0a-1 was allowable, auxiliary request 8 was not subject of the oral proceedings on 24 January 2023 and the impugned decision.

5.3 Regarding the deletion of the dependent claims corresponding to dependent claim 5 to 7, the board considers it an amendment within the meaning of Article 13(2) RPBA.

It would have been possible to file amended auxiliary requests with the patent proprietor's reply to the opponent's statement setting out the grounds of appeal. In view of the multiple auxiliary requests then already on file, the board accepts the patent proprietor's choice not to file such requests but to only announce possible amendments or a deletion of claims 5 to 7, in case the board followed the opponent's view, see the patent proprietor's reply dated 20 December 2023,

page 12, point 47.

Moreover, the inclusion of feature 1.9 in claim 1 (of auxiliary request 8a), which addresses the objection raised against granted dependent claim 6, was made at the earliest moment. As pointed out by the patent proprietor, there was no reason to file auxiliary request 8a already in the opposition proceedings.

5.4 Regarding the inclusion of the term "and a power supply thereof", there was no reason for the patent proprietor to file an amended claim during the opposition proceedings. It would have been desirable to file corresponding amendments after the opponent's reply to the patent proprietor's statement setting out the grounds of appeal, instead of waiting for the board's preliminary opinion. However, as the inclusion of said term clearly overcomes the opponent's objection, the board sees no reasons not to take into account auxiliary request 8a* only because of this late amendment.

5.5 Obviously, the deletion of the dependent claims and the inclusion of feature 1.9 overcome the objection raised against granted claims 5 and 6.

Features 1.4a' and 1.4b''' overcome the objection raised against granted claim 1, because a wording closer to the wording of claim 12 of the parent application is used. The board notes that the opponent did not raise any *specific* objections under Article 76(1) EPC against feature 1.4b''', see its reply dated 4 January 2024 to the patent proprietor's statement setting out the grounds of appeal, page 42, point 189.

The claims of auxiliary request 8a* overcome all objections under Article 76(1) EPC brought forward by the opponent during the appeal proceedings. Indeed, claim 1 is directed to embodiments described on page 3, lines 20 to 23; page 2, last line and Figures 16 and 17 and page 19, lines 10 to 17 of the parent application.

In view of these considerations, the board exercised its discretion under Article 13(2) and (1) RPBA to admit auxiliary request 8a* into the appeal proceedings.

6. Remittal to the opposition division

6.1 The patent proprietor requested to remit the case to the opposition division for further prosecution on the basis of the lower ranking requests 1 to 10 and their variations because "essential questions regarding the patentability of the subject-matter of the lower ranking auxiliary requests" had not yet been decided by the opposition division and would need to be examined by the board for the first time in full.

6.2 During the oral proceedings, the board informed the parties that it would not be appropriate to remit the case to the opposition division for further prosecution on the basis of auxiliary request 0a, 0a-1, 0b, 0b-1, 1, 1-1, 2, 2-1, 3, 3-1, 3a, 3a-1, 4, 4-1, 5, 5a, 5a-1, 6, 6-1, 7, 7-1, 8, 8-1, 8a (and auxiliary requests 8a-1, 9, 9-1, 10, 10a, 10a-1), as they were not allowable for the reasons discussed with the parties in the context of claims 1, 5 and 6 as granted.

6.3 Regarding the admitted auxiliary request 8a*, the board notes that the opponent addressed auxiliary requests 6 to 10 only very briefly in its reply dated

4 January 2024 to the patent proprietor's statement setting out the grounds of appeal, see points 188 to 199 on pages 42 to 44. In particular, with respect to feature 1.4b''', the opponent merely referred to the common general knowledge, point 194.

6.4 During the oral proceedings before the board, the opponent also agreed to remit the case to the opposition division for further prosecution.

6.5 The board finds it thus appropriate to remit the case to the opposition division for further prosecution (Article 111(1) EPC, Article 11 RPBA).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division for further prosecution.

The Registrar: The Chairman:

S. Sánchez Chiquero T. Häusser

Decision electronically authenticated