

Publication in the Official Journal ~~Yes~~ / No

File Number: T 534/90 - 3.4.2

Application No.: 85 112 193.9

Publication No.: 0 177 843

Title of invention: An operation panel and a displaying method of a copying machine

Classification: G03G 15/00

**D E C I S I O N**  
of 15 October 1991

Applicant: MITA INDUSTRIAL CO. LTD.

Headword:

EPC Article 123(2)

Keyword: "No unduly added subject-matter - after amendments"  
"Change of expression indicating the same thing does not violate Article 123(2) EPC"  
"Remittal to the Examining Division"

**Headnote**



Case Number : T 534/90 - 3.4.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.2  
of 15 October 1991

**Appellant :** MITA INDUSTRIAL CO. LTD.  
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**Representative :** Patentanwälte  
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**Decision under appeal :** Decision of Examining Division 044 of the  
European Patent Office dated 2 February 1990  
refusing European patent application  
No. 85 112 193.9 pursuant to Article 97(1) EPC.

**Composition of the Board :**

**Chairman :** E. Turrini  
**Members :** W.W.G. Hofmann  
L.C. Mancini

**Summary of Facts and Submissions**

- I. European patent application No. 85 112 193.9 (publication No. 0 177 843) was refused by decision of the Examining Division.
- II. The reason given for the refusal was that Claim 1 contained subject-matter extending beyond the content of the application as filed (Article 123(2) EPC).
- III. The Appellant lodged an appeal against the decision. In the Statement of Grounds he filed a new Claim 1.
- IV. In a communication the Board expressed its provisional view that Claim 1 contained features which violated Article 123(2) EPC.
- V. Oral proceedings were held at the end of which the Appellant withdrew his previous request and requested that the decision under appeal be set aside and that a patent be granted on the basis of amended Claims 1 to 4 handed over at the oral proceedings, of which Claim 1 reads as follows:

"Displaying method for a copying machine having an operation panel on which the set copy image density is displayed, and an automatic exposure function which automatically sets the copy image density data, characterized in that the following steps are performed, when the automatic exposure function is selected:

- (a) clearing at least the formerly set copy image density display before the exposure is automatically set,

- (b) executing the automatic exposure function based upon the set copy image density data, and
- (c) displaying the set copy image density after the automatic exposure function is completed."

Claims 2 to 4 are dependent on Claim 1.

VI. The Appellant argued that in the new Claim 1 all the objections of the Board had been met and that the features of this claim were all disclosed in the application as originally filed.

#### Reasons for the Decision

1. The appeal is admissible.
- 2.1 Claim 1 no longer contains the feature relating to pre-scanning, and the claim now indicates that it is the copy image density which is set and displayed. Thus, the points of objection mentioned in the decision of the Examining Division are removed.
- 2.2 The disclosure of the preamble part of Claim 1 is based on a combination of original Claims 11 and 14 (display of copy image density) supplemented with terms taken from Claims 1 (copying machine, operation panel) and 12 (automatic exposure function).
- 2.3 Feature (a) derives from original Claims 11, 12 and 14 (the "at least" being justified in view of the alternative mentioned in original Claim 13).

Moreover, the same disclosure can be derived from the original description, page 5, lines 18 to 25, or from

page 19, lines 11 to 14, page 20, lines 12 to 14, page 21, lines 1 to 4, and Figure 5 (step 2).

Unlike the original application and also present Claim 1 in all of its other parts, feature (a) of Claim 1 does not use the term "to set the copy image density" (by means, for example, of automatic exposure), but the term "to set the exposure". While it would certainly be desirable to use consistently the same terms for the same facts, the Board does not see a violation of Article 123(2) EPC in this change of expression in feature (a) since both expressions indicate the same thing, i.e. setting the quantitative conditions of the image production (for obtaining a certain copy image density).

- 2.4 Feature (b) follows from original Claims 11 and 12 and Figure 5 (steps 6 and 7). The connection between set copy image density data and the automatic exposure function also results from page 5, line 18 to page 6, line 5, and page 19, lines 10 to 11.
- 2.5 Feature (c) is disclosed on original page 20, lines 2 to 6 and 12 to 14 as well as in Figure 5 (steps 7 and 8).
- 3.1 The additional features of Claim 2 are disclosed in original Claims 15 and 16 as well as on page 20, lines 16 and 17.
- 3.2 Clearing other set data (Claim 3) is mentioned on original page 21, lines 4, 16 and 17.
- 3.3 Inhibiting setting operations of other data (Claim 4) is mentioned on original page 21, lines 5, 17 and 18.

4. The present description and figures were filed during the examining procedure with the Appellant's letter of 18 September 1989. No unduly added subject-matter is apparent in these documents.
5. Thus, the Board comes to the conclusion that the subject-matter contained in the present application documents does not extend beyond the content of the application as filed and therefore fulfills the requirements of Article 123(2) EPC.
6. The Examining Division has not yet examined the further requirements of patentability. Therefore, the case is remitted to the first instance

**Order**

**For these reasons, it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution on the basis of the set of Claims 1 to 4 presented at the oral proceedings.

**The Registrar:**

**The Chairman:**

**M. Beer**

**E. Turrini**