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File Number: T 630/90 - 3.2.2
Application No.: 85 109 832.7
Publication No.: 0 176 702
Title of invention: Intaglio printing machine

Classification: B41F 9/02, B41F 11/02, B41F 31/10

DECISION
of 27 July 1992

Proprietor of the patent: Komori Corporation
Opponent: Orell Füssli Graphische Betriebe AG

Headword:

EPC Articles 54(2), 56, Rule 67

Keyword: "Lack of inventive step - main request and auxiliary requests"



Case Number : T 630/90 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 18 May 1992

Appellant :
(Proprietor of the patent)

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Representative :

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Respondent :
(Opponent)

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Representative :

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Decision under appeal :

Decision of Opposition Division 2.3.04.086 of the
European Patent Office dated 25 May 1990
rejecting the opposition filed against European
patent No. 0 176 702 pursuant to Article 102(2)
EPC.

Composition of the Board :

Chairman : G.S.A. Szabo
Members : W.D. Weiss
W. Moser

Summary of Facts and Submissions

I. European patent No. 0 176 702 was granted on 10 August 1988 on the basis of European patent application No. 85 109 832.7, filed on 5 August 1985.

II. An opposition was filed against this patent on the grounds of lack of novelty and inventive step in the light of four documents of which

(D1) a manuscript titled "Experiments with a new ductor

roller" of a speech held by Mr Adolf Kuhl at the Machinery Committee of the Banknote Printers' conference in Helsinki on 10 June 1965 and

(D2) an article published in conference report "Banknote

Printers' Conference", Athens 1966, pages 52 to 57; by the same author, i.e. Mr Kuhl.

are of particular relevance.

It is not under dispute that these documents constitute a state of the art according to Article 54(2) EPC (letter by the Appellant dated 21 May 1990).

III. In the course of the Opposition proceedings on 16 October 1989, the Appellant submitted an amended Main Claim, which in its characterising portion contained a feature which was not part of any of the claims as granted and, therefore, could not yet have been commented upon by the Respondent in his letter of opposition. Consequently, the Opposition Division, by a communication of 26 October 1989, conceded a period of four months to

the Respondent to present his comments and requests vis-à-vis this new claim.

The Respondent (Opponent) by a letter received on 22 February 1990, maintained his negative attitude also with respect to this claim, based on a detailed reasoning which, for the first time, also contained adverse comments about the feature which had been incorporated into the claim by the Appellant with the intention to overcome the arguments in the initial letter of opposition.

On 28 February 1990 the Opposition communicated a copy of the Respondent's letter to the Appellant "To take Note" but without conceding any time limit.

The Opposition Division revoked the patent pursuant to Article 102(1) EPC in a decision dated 25 May 1990 on the ground that the amended Claim 1, in the version submitted with the letter of 9 October 1990, was not novel with respect to document (D1).

On 23 May 1990 by letter of 21 May 1990, the Appellant filed another amended Main Claim which arrived at the registry of the Opposition Division on 28 May 1990, hence after dispatch of the decision mentioned above.

IV. The Appellant filed an appeal against this decision on 27 July 1990 paying the appeal fee simultaneously. The Statement of the Grounds containing two additional versions of a Claim 1, which correspond to a first and a second auxiliary request, was filed on 28 August 1990.

The Appellant mainly contests that, according to document (D1), the usage of a transparent foil and of a granulated screen was made with the intention for obtaining the particular enlargement effect, and argues

that the Opposition Division, therefore, was wrong in their evaluation of document (D1).

Moreover, he objects that his petition submitted with letter of 21 May 1990 and containing a modified Claim 1, which he now maintains as a main request, was not taken into consideration because it obviously crossed in the mail with the decision. He claims that a time limit should have been set for him to respond to the Respondent's letter of 16 February 1990 by which his new claims filed on 16 October 1989 by a letter of 9 October 1989 had been attacked.

- V. The Claim 1 according to the main and the two auxiliary requests read as follows:

Main Request: "Intaglio printing machine including

- a plate cylinder (36) having attached thereon plate means (37) being provided with ink holding recesses,
- a pattern roller (38) with projections (38a) being in rolling contact with selected portions of the outer surface of said plate means (37), and
- an inking unit (42) with a duct roller (39) being in rolling contact with said pattern roller (38) and having substantially the same diameter as the same,

whereby within portions of the outer surface of said duct roller (39) there are formed in circumferential and axial direction ink holding recesses (39a) being in registration with the ink holding recesses of said plate means (37) characterized in that the ink holding recesses (39a) within the duct roller (39) the depth of which correspond to the depth of the corresponding ink holding recesses of the plate means (37) cover a wider area than the image portion (51) of the plate means (37)." (emphasis added)

First Auxiliary Request: "Intaglio printing machine including

- a plate cylinder (36) having attached thereon plate means (37) being provided with ink holding recesses,
- a pattern roller (38) with projections (38a) being in rolling contact with selected portions of the outer surface of said plate means (37), and
- an inking unit (42) with a duct roller (39) being in rolling contact with said pattern roller (38) and having substantially the same diameter as the same,

whereby within portions of the outer surface of said duct roller (39) there are formed in circumferential and axial direction ink holding recesses (39a) being in registration with the ink holding recesses of said plate means (37) characterized in that the ink holding recesses (39a) within the duct roller (39) the depth of which correspond to the depth of the corresponding ink holding recesses of the plate means (37) cover a wider area than the image portion (51) of the plate means (37), whereby the magnification factor lies within the range of 0.2 and 2% along the circumferential direction." (emphasis added)

Second Auxiliary Request: "Intaglio printing machine including

- a plate cylinder (36) having attached thereon plate means (37) being provided with ink holding recesses,
- a pattern roller (38) with projections (38a) being in rolling contact with selected portions of the outer surface of said plate means (37), and
- an inking unit (42) with a duct roller (39) being in rolling contact with said pattern roller (38) and having substantially the same diameter as the same,

whereby within portions of the outer surface of said duct roller (39) there are formed in circumferential and axial direction ink holding recesses (39a) being in registration with the ink holding recesses of said plate means (37) characterized in that the ink holding recesses (39a) within the duct roller (39) the depth of which correspond to the depth of the corresponding ink holding recesses of the plate means (37) cover a wider area than the image portion (51) of the plate means (37), and that the inking unit (42) further includes an ink blade (40) of high rigidity and distortion adjusting screws (44) for adjusting the distortion of said ink blade (40) wherein the duct roller (39) is aligned with said plate cylinder (36) along circumferential and axial directions thereof so set a space between said ink blade (40) and said duct roller (39) to be 0.03 to 0.05 mm along the longitudinal direction of said ink blade (40)." (emphasis added)

VI. The Respondent contends that

- the subject-matter of Claim 1 according to the main request is not novel having regard to document (D1);
- Claim 1 according to the first auxiliary request contravenes Articles 123 and 84 (clarity) EPC, and that its subject-matter is not novel over document (D1);
- the subject-matter according to the second auxiliary request fails to involve an inventive step having regard to a combination of document (D1) with two newly cited documents:

(D5) DD-A-110 632

(D6) pages 7-65 to 7-87 of an Operation Manual (KOEBAU-DE LA RUE GIORI) of a printing machine constructed on the basis of document (D5).

The Respondent asserts that document (D6) has been handed over since 15 years to clients who bought a printing machine constructed as disclosed in the documents (D5) and (D6) and offers to prove that (D6) is prepublished, if the Board should deem it necessary to take it into consideration.

VII. In a Communication dated 28 January 1992 the Board drew the attention to the fact that documents (D1) and (D2) were based on subsequent presentations by the same person about the same technical project and therefore it might be logical to complement the teaching of the second of these documents by the teaching of the first and to consider this combined knowledge about this technical project as one state of the art only. Under this condition the subject-matter of Claim 1 according to the main request might be considered not to be novel.

But even if documents (D1) and (D2) were considered to contain separate teachings, the subject-matter of Claims 1 according to the main and the first auxiliary requests appeared to be obvious in the light of documents (D1) and (D2).

Moreover, the subject-matter of Claim 2 according to the second auxiliary request might not involve an inventive step, when document (D5) is considered together with documents (D1) and/or (D2).

VIII. The Appellant submitted the following requests:

- The patent in suit should be maintained on the basis of Claim 1 filed on 23 May 1990 (by a letter dated 21 May 1990) followed by Claims 2 to 4 as granted (main request);

- on an auxiliary basis the Main Claims according to the first or second auxiliary requests submitted on 28 August 1990 should be considered;
- the appeal fee should be refunded.

The Respondent requests that the appeal be dismissed in its entirety.

Reasons for the Decision

1. The appeal is admissible.
2. Admissibility of amendments and clarity of claims

It is undisputed that the claims and description as amended are based on the original disclosure and that they are not amended in such a way as to extend the protection conferred, and the Board has no objections in this respect either.

The Respondent has challenged the clarity of the feature "the ink holding recesses within the duct roller ... cover a wider area than the image portion of the plate means, whereby the magnification factor lies within the range of 0.2 and 2% along the circumferential direction". The Board cannot follow this view, because this feature is clear in expressing that the said area may be wider in all directions but at least must be wider by said factor in the circumferential direction.

3. Closest prior art

It is undisputed that (D1) and (D2) constitute prior art pursuant to Article 54(2) EPC (cf. letter by the Appellant dated 21 May 1990, page 2, paragraph 4).

Document (D2) (Figure 3) discloses an intaglio printing machine including

- a plate cylinder (4) having attached thereon plate means being provided with ink holding recesses which define image portions on the plate means,
- a pattern roller (3) with projections (corresponding to the image portions on the plate cylinder) being in rolling contact with the image portions of the outer surface of said plate means,
- an inking unit (1, 2) with a duct roller (2) being in rolling contact with said pattern roller (3) and having essentially the same diameter as the same, and
- ink holding recesses formed in circumferential and axial direction within portions of the outer surface of said duct roller (2), which ink holding recesses are in registration with the ink holding recesses of said plate means (4).

Thus, all the features in the pre-characterising portion of Claim 1 are disclosed in (D2).

Moreover, it is also clearly and unambiguously derivable from Figure 3 of document (D2) that the depth of the recesses in the respective ductor roller (2) corresponds to the depth of the corresponding ink holding recesses of the plate means., which is a characterising feature of Claim 1 in all three versions.

Document (D1) which earlier reported about the same printing machine, discloses in its Figure 1 all the features enumerated above except that there the pattern roller (3) is not shown to be provided with projections which register and are in rolling contact with the image portions of the plate cylinder (4).

Document (D1) (cf. the paragraph bridging the pages 1 and 2) discloses that a 1:1 diapositive of the printing plate image portion was used to prepare the corresponding recess containing portion of the ductor roller. This diapositive was, however, not copied onto the surface of the ductor roller while being in direct contact but via the interposition of a transparent 0.1 mm thick foil. This measure leads to a slightly unclear picture which inevitably covers an area which is slightly wider than the area that would have been covered by a clear picture which is equal to the area covered by the respective image portion on the plate cylinder.

Consequently, the last feature of Claim 1 according to the main request is clearly and unambiguously implied by the description of document (D1).

4. Novelty

4.1 It follows from the detailed analysis given in paragraph 3 above that neither of the documents (D1) and (D2) together discloses all the features of Claim 1 according to the main request. Therefore, the novelty of Claim 1 of the main request would only be questionable, if the documents (D1) and (D2) could be considered as a combined single disclosure representing the knowledge which a person skilled in the art had at the end of the year about the technical development of an intaglio printing machine to which they both refer, on the basis of two disclosures by the same author. However, there is no cross reference from one disclosure to the other, and taken separately, they do not affect the novelty of Claim 1 according to the main request.

4.2 A numerical value for the magnification factor as indicated in the Claims 1 according to the two auxiliary requests is neither disclosed in (D1) nor in (D2). Moreover, neither of these two documents discloses the details of the adjustment for the ink blade given in Claim 1 of the second auxiliary request.

Consequently, the subject-matter of the Claims 1 of both auxiliary requests is also novel even with respect to the combined disclosure of these two documents.

5. Inventive step

5.1 Main request and first auxiliary request

5.1.1 According to the detailed analysis given in paragraph 3 above, the subject-matter of Claim 1 according to the main request differs from the disclosure of document (D2), which the Board considers to be the closest prior art, by the feature that the ink holding recesses (39a) within the duct roller (39) cover a wider area than the image portion (51) of the plate means (37). According to Claim 1 of the first auxiliary request this feature is additionally specified by stating that the magnification factor lies within the range of 0.2 and 2% along the circumferential direction.

5.1.2 The description (Column 1 to Column 2, line 53) in combination with Figure 1 of the patent in suit describes an intaglio machine which was conventional at the priority date. It is of particular importance that the projections (5a) on the surface area of this conventional pattern roller were larger than the image area (3a) of the plate cylinder with which they were in contact (EP-B-

0 176 702, Column 1, lines 45 to 55, and Column 2, lines 4 to 7). Although it is not a claimed feature of the patent in suit, the corresponding projections (38a) of the patented printing machine also have such an enhanced surface (cf. Column 4, last paragraph).

In order to provide for a better dosage of the ink supply to the ink holding recesses in the image portion of the printing plate, the state of the art according to the documents (D2) has also formed ink holding recesses in the outer surface of the duct roller which (via the projections of the pattern roller) are in registration with the ink holding recesses of the printing plate. The technical problem in the present case is a further improvement in the same direction.

- 5.1.3 It is obvious for a person skilled in the art to preserve from the still older prior art those generally known features which have proved to be useful and to adapt the younger state of the art according to document (D2) to the previous state of the art depicted in Figure 1 of the patent in suit and acknowledged in the description with respect to those features. In view of this, the size of the recess holding area of the duct roller must be adapted to the size of the surface of the projections on the pattern roller, which latter size is slightly larger than the size of the corresponding image portion on the printing plate to which the ink is delivered. The range for the magnification factor further stated in Claim 1 according to the first auxiliary request then is merely the result of a routine optimisation by adaptation. Therefore the total information content of the disclosure concerning the background provides all facts which were not yet disclosed in (D2).

5.1.4 Consequently Claims 1 according to the main request and the first auxiliary request do not involve an inventive step.

5.2 Second auxiliary request

5.2.1 Claim 1 according to the second auxiliary request differs from Claim 1 according to the main request by the feature "that the inking unit (42) further includes an ink blade (40) of high rigidity and distortion adjusting screws (44) for adjusting the distortion of said ink blade (40) wherein the duct roller (39) is aligned with said plate cylinder (36) along circumferential and axial direction thereof to set a space between said ink blade (40) and said duct roller (39) to be 0.03 to 0.05 mm along the longitudinal direction of said ink blade (40)".

Whereas the subject-matter of Claim 1 according to the main requests provides that the global quantity of ink delivered by the ink ducts (42) is distributed according to the varying demands of different areas of the image portion, this additional feature solves the additional partial problem to permit a finer adjustment of the global quantity of ink delivered by the ink ducts (42) and to further reduce the amount of excess ink which has to be removed (cf. column 7, lines 20 to 31). Although this feature thus contributes to the solution of the same general problem as the combination of the preceding features, its functional principle is quite different and its contribution to the overall solution is simply additive, i.e. merely aggregative in nature. It is, therefore, admissible to cite additional prior art with respect to this feature.

5.2.2 Document (D5), DD-A-110 632 (e.g. Figure 2), discloses an inking unit comprising the same constructional features of

the adjustment mechanism for the ink blade as claimed according to the second auxiliary request. This known ink blade is equipped with micrometer screws which permit a very precise adjustment also in the range indicated in this version of Claim 1. Apart from this, the application of fine adjustment by such and similar means could also be understood as a matter of common general knowledge.

5.2.3 Consequently, also this claim does not involve an inventive step. Thus, no patentable invention can be recognised in any Claim 1 of the various requests.

6. Reimbursement of the appeal fee

In principle, it would have been the duty of the Opposition Division for reasons of equity of rights to grant an equal time limit to the Appellant to react on the submissions of the Respondent as was granted to the latter when commenting for the first time on a newly filed claim giving rise to a new situation.

In the present case, however, the Appellant reacted on the Respondent's letter of 16 February 1990 by submitting a new main claim which he himself considered to correspond essentially to the previous main claim with minor corrections especially with regard to certain reference symbols (cf. letter of 21 May 1990). This main claim was maintained as main request during the appeal proceedings. Therefore, the Respondent, by his belated letter of 21 May 1990, has not created a new procedural situation, which, pursuant to Article 113(1) EPC, would have called for a further communication by the Opposition Division before the issue of a final decision.

It ensues that no substantial procedural violation within the meaning of Rule 67 EPC occurred which could possibly

have justified a decision by the Board to set aside the decision under appeal, to remit the case to the Opposition Division for further prosecution and to refund eventually the appeal fee by reason of said procedural violation. Moreover, the Board deems the appeal not to be allowable for the reason indicated in paragraph 6 (supra).

For these reasons, the requirements of Rule 67 EPC are not met in the present case; consequently, the request for reimbursement of the appeal fee has to be rejected.

Order

For these reasons, it is decided that:

1. The Appeal is dismissed.
2. The request to reimburse the appeal fee is rejected.

The Registrar

The Chairman



S. Fabiani



G. Szabo