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File Number: T 708/90 - 3.2.5

Application No.: 84 100 546.5

Publication No.: 0 116 862

Title of invention: Reversible color deck for rotary printing presses

Classification: B41F 7/08

D E C I S I O N
of 6 November 1992

Proprietor of the patent: Rockwell International Corporation

Opponent: MAN ROLAND Druckmaschinen AG

Headword:

EPC Article 56

Keyword: "Inventive step (yes)"



Case Number : T 708/90 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 6 November 1992

Appellant :
(Opponent)

MAN ROLAND Druckmaschinen AG
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Respondent :
(Proprietor of the patent)

Rockwell International Corporation
600 Grant Street
Pittsburgh
Pennsylvania 15219 (US)

Representative :

Leiser, Gottfried, Dipl.-Ing.
Patentanwälte
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Decision under appeal :

Decision of Opposition Division of the European
Patent Office dated 19 June 1990 rejecting the
opposition filed against European patent
No. 0 116 862 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : C.V. Payraudeau
Members : A. Burkhart
H.J. Seidenschwarz

Summary of Facts and Submissions

I. The Appellant filed an opposition against the European patent No. EP-B1-0 116 862 based on the grounds that the subject-matter of this patent was lacking an inventive step and that Claim 1 of the patent was not clear. During the opposition procedure the Appellant cited notably the following documents:

D1: Prospectus "UNIMAN" of MAN, allegedly published in May 1977,

D2: Magazine "Deutscher Drucker", No. 41/2-11-72, pp. 4 ff..

II. The Opposition Division rejected the opposition and maintained the patent in unamended form, considering that its subject-matter was new and involved an inventive step.

III. The Appellant (Opponent) filed an appeal against this decision which was based on the grounds that the subject-matter of Claim 1 was not new and did not involve an inventive step having regard to the teachings of the documents D1 and D2.

IV. Claim 1 of the granted patent reads as follows:

"1. A reversible color deck for a rotary press comprising:

(a) three delivering rolls (12, 14, 16; 28) spaced apart in a substantially triangular relationship with respect to each other;

- (b) a pair of blanket rolls (18, 20) located within the space separating said delivering rolls (12, 14, 16; 28), and
- (c) eccentric mounting means (32, 32', 38, 52, 66) supporting said blanket rolls (18, 20) for effecting simultaneous movement of the latter between positions including a position where neither of said blanket rolls (18, 20) is in contact with any of said delivering rolls (12, 14, 16; 28);

characterised in that said positions include:

- (i) a position where a first one (18) of said blanket rolls (18, 20) is in contact with two (12, 14) of said image delivering rolls (12, 14, 16; 28) and the second one (20) of said blanket rolls (18, 20) is in contact with the remaining one (16) of said image delivering rolls (12, 14, 16; 28), and
- (ii) a position where said second blanket roll (20) is in contact with two (14, 16) of said image delivering rolls (12, 14, 16; 28) and said first blanket roll (18) is in contact with the remaining one (12) of said image delivering rolls (12, 14, 16; 28);

said three delivering rolls (12, 14, 16; 28) being image delivering rolls.

V. The arguments submitted by the Appellant can be summarised as follows:

- (i) The document D1 was comprised in the state of the art as it had been distributed in thousands at the "DRUPA" fair in 1977. The Appellant had offered that the EPO should summon a witness Mr Jurgen Classen

which could give evidence that this prior publication was effectively made.

- (ii) The sketches on page 8 of document D1 and on Figure 12 of document D2 show rotary presses comprising a roll assembly, wherein the delivering rolls and blanket rolls are arranged and are in contact with each other as claimed in Claim 1 of the patent. In particular, the embodiment according to the lower sketch of Figure 12 of document D2 is suitable for solving the problem underlying the subject-matter of the patent, namely to selectively print a plurality of colours either on one side or the other of the paper web.
- (iii) The embodiment according to Figure 2 of the patent in suit is not covered by the wording of Claim 1 and should be deleted, since in this embodiment the image delivering roll 28 is not in contact with the blanket rolls 18 and 20, respectively.
- (iv) Furthermore, there is a discrepancy between the description in column 2, lines 59 to 64 and Figures 1 and 2 of the patent, concerning the operation according to lines 22 and 24, respectively.

VI. The arguments submitted by the Respondent can be summarised as follows:

- (i) The Opponent has failed to provide any evidence that document D1 has actually been made available to the public before the priority date of the patent-in-suit.

(ii) The features of Claim 1 "that the colour deck comprises eccentric mounting means supporting the blanket rolls for effecting simultaneous movement of the blanket rolls between various positions" are not disclosed in or suggested by the cited sketches of documents D1 or D2. Furthermore, documents D1 and D2 show many press roll arrangements, but none offering the possibility of selectively printing three colours on either side of the web. Therefore, documents D1 and D2 neither address the problem underlying the invention nor suggest the solution to this problem as defined in Claim 1.

VII. The Appellant requested that the decision under appeal be set aside and the patent be revoked.

The Appellant also asked that the question, whether it was permissible for the EPO to grant a patent having an independent claim which embraced the state of the art, should be referred to the Enlarged Board of Appeal in accordance with Article 112(1)(a) EPC.

VIII. The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. Date of availability to the public of the document D1.

The Appellant has offered to produce evidence of the date of availability to the public of the document D1. The Board of Appeal has considered it unnecessary in the present circumstances to request this evidence to be produced since the document D1 does not in any case reveal features which are closer to the subject-matter of Claim 1

of the patent in suit than the document D2, the publication of which prior to the priority date of the patent in suit has not been contested.

2. The objections of the Appellant that the embodiment of Figure 2 was not covered by Claim 1 and that there was a discrepancy between the description and Figure 2, are no grounds for opposition under Article 100 EPC. Therefore, the Board will not deal with these objections.

3. Novelty

- 3.1 The lower sketch of a printing machine shown in Figure 12 of the document D2 is a schematic view of a printing unit which contains six unidentified cylinders or rolls which apparently correspond to the configuration according to Figure 2 of the patent in suit. Although this is not expressly described in document D2, it is fairly reasonable to consider that the inner rolls shown in this sketch are blanket rolls and that the outer rolls are image delivering rolls. Therefore, one may admit that this sketch discloses the features (a) and (b) of the preamble of Claim 1 and the position (i) of the characterising portion of this claim.

A similar configuration is shown on page 8 of document D1.

- 3.2 The sketches of documents D2 and D1 referred to by the Appellant disclose neither eccentric mounting means supporting the blanket rolls for effecting simultaneous movement of the latter between various positions as defined in point (c) of the preamble of Claim 1 nor the position of the blanket rolls according to point (ii) of the characterising portion of this claim.

3.3 Therefore the subject-matter of Claim 1 of the patent in suit is new with respect to the disclosure of document D2 and would also be new with respect to the disclosure of document D1 if the latter were to be recognised as having a date prior to the priority date of the patent in suit.

3.4 The subject-matter of Claim 1 of the patent in suit is also new with respect to the disclosure of document US-A-4 218 972 (D4) which, although not cited by the Appellant during the appeal proceedings, is cited in the introductory part of the patent in suit and represents the closest prior art to the claimed invention.

This document D4 discloses a reversible colour deck for a rotary press comprising two image delivering rolls (plate rolls 16 and 17), an impression roll 20 and a pair of blanket rolls 18 and 19, the rolls 16, 17 and 20 being spaced apart in a substantially triangular relationship with respect to each other, and the pair of blanket rolls 18, 19 being located within the space separating the rolls 16, 17 and 20. Furthermore, eccentric mounting means support said blanket rolls for effecting simultaneous movement of the latter between positions including a position where neither of said blanket rolls is in contact with any of said rolls 16, 17 and 20.

Therefore D4 discloses all the features of the preamble of Claim 1 of the patent in suit. However, this document does not disclose any of the features of the characterising portion of this claim.

3.5 Consequently, the subject-matter of Claim 1 is new within the meaning of Article 54 EPC.

4. Inventive step

4.1 According to document D4 which represents the nearest state of the art, the mounting means supporting the blanket rolls 18, 19 are effective to selectively obtain two extreme operating positions, i.e. a contact of four rolls 16 to 19 (excluding the impression roll 20) and a contact of all five rolls 16 to 20. These different operating positions selectively permit printing simultaneously on both sides of a web or multi-colour printing on one side only of a web. However, selectively printing a plurality of colours either on one side or the other side of a web cannot be achieved by these different operating positions.

4.2 Therefore, the problem underlying the invention consists in providing a device for rotary printing presses for selectively printing a plurality of colours either on one side or the other of a paper web.

4.3 This problem is solved in that the reversible colour deck for a rotary press known from document D4 is modified by the features of the characterising portion of Claim 1, namely

that the three delivering rolls are image delivering rolls, and

that the positions of the blanket rolls include

- (i) a position where a first one of said blanket rolls is in contact with two of said image delivering rolls and the second one of said blanket rolls is in contact with the remaining one of said image delivering rolls, and

(ii) a position where said second blanket roll is in contact with two of said image delivering rolls and said first blanket roll is in contact with the remaining one of said image delivering rolls.

4.4 The document D2 does not suggest the aforementioned solution.

The printing unit disclosed in document D2 comprises three web paths, two of which are provided for printing in two colours on one side and one colour on the other side, the third path being provided to print in three colours on only one side of the web. There is no disclosure or hint in document D2 that a paper web could be selectively printed with a plurality of colours, either on one side or the other. No means are provided for effecting a simultaneous movement of the blanket rolls between two positions with respect to the image delivery rolls.

Since in document D2 no means for solving the problem underlying the invention are suggested, the specific solution according to Claim 1, which consists in the combination of the features (a), (b), (c), (i) and (ii), is not rendered obvious to the person skilled in the art (knowing the document D4) by the teaching of this document.

4.5 The same applies to document D1 which shows the printing of two webs, the webs being printed on both sides, one web carrying a monochromatic printing on both sides and the other web carrying a two-colour printing on one side and a monochromatic printing on the other side, or the printing of one web carrying a four-colour printing on one side and a monochromatic printing on the other side. Therefore, even if it was established that the document D1 was available to the public at the date of priority of the

contested patent, it would not be considered either alone or in combination with the teaching of document D4 as rendering obvious the combination of features claimed in the patent in suit.

4.6 Therefore, the subject-matter of Claim 1 involves an inventive step within the meaning of Article 56 EPC. Claims 2 to 4 which are dependent on Claim 1 and relate to specific embodiments of the subject-matter of Claim 1 are also patentable.

4.7 The patent can thus be maintained unamended.

5. Referral to the Enlarged Board of Appeal

5.1 The Appellant has asked the Board to refer to the Enlarged Board of Appeal the question whether it was permissible to grant or maintain a European patent with an independent claim which embraces the disclosed prior art.

5.2 If this question is to be interpreted as meaning whether the subject-matter of an independent claim has to be new with respect to the prior art to be patentable, the question needs not be referred to the Enlarged Board of Appeal since its answer is already clearly given in Article 52(1) EPC which states that; "European patents shall be granted for any inventions ... which are new ...".

5.3 If, on the other hand, this question means whether the features of the prior art should be excluded from the claim, the answer is already given by the Rule 29(1) which states that wherever appropriate, the claims shall contain: "(a) a statement indicating the designation of the subject-matter of the invention and those technical features which are necessary for the definition of the

claimed subject-matter but which, in combination, are part of the prior art".

Therefore, this question does not concern the uniform application of the law nor an important point of law and the request of the Appellant to refer this question to the Enlarged Board of Appeal has to be rejected.

Order

For these reasons, it is decided that:

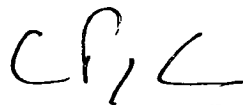
1. The request to refer a question of law to the Enlarged Board of Appeal is rejected.
2. The appeal is dismissed.

The Registrar:



A. Townsend

The Chairman:



C. Payraudeau