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D E C I S I O N
of 16 February 1996

Case Number: T 0974/92 - 3.2.5

Application Number: 84101019.2

Publication Number: 0115854

IPC: B41F 23/08

Language of the proceedings: EN

Title of invention:
Varnish coater for printed product

Patentee:
Komori Corporation

Opponent:
Heidelberger Druckmaschinen AG
Koenig & Bauer Aktiengesellschaft
M.A.N. - ROLAND Druckmaschinen Aktiengesellschaft
Billhöfer Maschinenfabrik GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - no"

Decisions cited:
-

Catchword:
-



Case Number: T 0974/92 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 16 February 1996

Appellant:
(Proprietor of the patent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office given orally on 7 July 1992
and posted 6 August 1992 revoking European patent
No. 0 115 854 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: G. Gall
Members: C. Biggio
W.-D. Weiss

Summary of Facts and Submissions

I. Four oppositions were filed against the grant of the European patent No. 0 115 854 on the grounds that the subject-matter of the European patent was not patentable within the terms of Articles 52 to 57 EPC (Article 100(a) EPC).

II. The opposition division revoked the European patent pursuant to Article 102(1) EPC on the ground that the subject-matter of the independent claims according to the main or any of the auxiliary requests did not involve an inventive step with respect to the teachings disclosed by the cited prior art documents DE-A-2 020 584 (D1), GB-A-433 132 (D2) and DE-B-1 229 549 (D3).

In view of this finding the opposition division did not deem it necessary to examine further the alleged public prior use put forward by respondents II to IV (opponents II to IV).

III. The appellant (proprietor of the patent) lodged an appeal against this decision of the opposition division and requested that the decision under appeal be set aside and that the patent be maintained in amended form.

The respondents requested that the appeal be dismissed. All parties requested oral proceedings on an auxiliary basis.

IV. In a communication accompanying the summonses to oral proceedings the Board expressed its preliminary opinion that if the cited documents were found not to prejudice the maintenance of the patent in amended form as requested by the appellant, the case was likely to be

remitted to the first instance in order not to deprive the parties of a review by two instances with respect to the alleged prior use. Consequently, the main issue to be discussed during the oral proceedings was whether the requests of the appellant were allowable in view of the cited prior art documents.

V. Oral proceedings were held on 8 November 1995.

- (i) The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of: as main request claims 1, 3 and 4 filed at the oral proceedings and claim 2 as granted, as first auxiliary request claims 1, 3 and 4 filed at the oral proceedings and claim 2 as granted, as second auxiliary request claims 1, 3 and 4 filed at the oral proceedings and claim 2 as granted.
- (ii) The respondents requested that the appeal be dismissed.

During the oral proceedings the respondent I cited for the first time the document DE-A-2 845 932 (D4) against claim 1 according to the first auxiliary request.

VI. Claim 1 according to the main request filed at the oral proceedings reads as follows:

- "1. A varnish coater (21) for a printed product, comprising:
- (a) upstream rollers (41, 54) for picking up and metering varnish (43);
 - (b) a form roller (68) which is brought into contact with one of said upstream rollers (41, 54) to receive the varnish (43) therefrom;
 - (c) a blanket cylinder (23) which

- (c.1) in its throw-on position is brought into contact with said form roller (68) and an impression roller (11);
 - (d) a main drive source for driving said impression roller (11);
- characterized by
- (e) a subdrive source (30) for driving said upstream rollers (41, 54);
 - (f) a first one-way clutch (103) being arranged between the form roller (68) and the blanket cylinder (23);
 - (g) a second one-way clutch (100) being arranged between the form roller (68) and the subdrive source (30); and
 - (h) a gear mechanism (26, 104; 99, 101, 102) connecting said clutches (103, 100) with
 - (h.1) said roller (68),
 - (h.2) said blanket cylinder (23) and
 - (h.3) said subdrive source (30) in such a kind that
 - (h.4) said form roller (68) - irrespective of the throw-on and throw-off operation between the blanket cylinder (23) and the form roller (68) - is driven by one of the two drive sources which has a higher rotational speed, namely
 - (h.4.1) either by the main drive source via said blanket cylinder (23) and said first one-way clutch (103) as long as the main drive source is running, or
 - (h.4.2) by said subdrive source (30) via the second one-way clutch (100) when said blanket cylinder (23) is separated from said form roller (68) and when said main drive source is stopped at the same time;
 - (h.5) wherein in both cases said upstream rollers, namely a pan roller (41) and a metering roller (54) are driven by the subdrive source (30)."

Claim 1 according to the first auxiliary request comprises all the features of claim 1 according to the main request and is further characterized by the following features (whereby the full stop is replaced by "; and"):

- (i) means (84, 85, 81, 81a, 81b, 89) for defining three throw-on/off positions of the form roller (68), namely
 - (i.1) a first position corresponding to a throw-off of the form roller (68) with respect to the blanket cylinder (23) in its throw-on position with respect to the impression roller (11);
 - (i.2) a second position corresponding to a throw-on of the form roller (68) with respect to the blanket cylinder (23) in its throw-on position with respect to the impression roller (11);
 - (i.3) a third position corresponding to a throw-on of the form roller (68) with respect to the blanket cylinder (23) in its throw-off position with respect to the impression roller (11).

Claim 1 according to the second auxiliary request comprises all the features of claim 1 according to the main request and is further characterized by the following features (whereby the full stop is replaced by "; and", and whereby a clerical error in the word "positions" has been corrected to read "portions"):

- (i) a throw-on and -off mechanism (74, 75) of the form roller (68) comprising cam means (81) having large and small diameter portions (81a, 81b) limiting the contact force of the form roller (68) with respect to the blanket cylinder (23) when the blanket cylinder (23) is respectively in its throw-on or throw-off position with respect to the impression roller (11).

VII. In support of his requests the appellant argued essentially as follows:

It was the object of the invention to provide a varnish coater with an improved quality of the varnish film produced on the surface of a printed product and whereby hardening of the varnish on the form roller - when the printing process was interrupted - was prevented. This object was achieved by the varnish coater according to claim 1, in particular by the feature that during normal operation the form roller and the blanket cylinder - irrespective of the throw-on and throw-off operation between them - were driven by a main drive source, and that during printing pauses the form roller was driven by a subdrive source. The pan roller, and also the metering roller, were always driven by the subdrive source, so that during normal operation the subdrive source provided a speed differential between the metering roller and the form roller for achieving a uniform ink film. By driving the form roller and the blanket cylinder during normal operation - irrespective of the throw-on operation between them - with the same source, irregular rotations between the form roller and the blanket cylinder were avoided, thus eliminating a non-uniformity of the varnish film. Moreover, damage to the form roller was prevented in this way.

The objective starting point to consider inventive step was document D1, being the only document of the citations D1, D2 and D3 against the patent in suit that related to a varnish coater. This document disclosed that a person skilled in the art of offset printing, before the priority date of the patent in suit, had only envisaged to modify a dampening unit in an offset printing device for the use as a varnish coater. In contrast, document D2 and D3 related to a printing mechanism for rubber stereo printing with very rapid

drying inks, and an aniline (relief) printing device, respectively, so that the person skilled in the art would not have had an incentive to combine document D1 with document D2 or document D3. The age of these documents - the documents D1, D2 and D3 were published more than 20, 46 and 16 years before the priority date of the patent in suit, respectively - was itself an indication that the claimed subject-matter was not obvious.

Document D1 on which the preamble of claim 1 was based disclosed neither a subdrive source, nor one-way clutches, nor a gear mechanism connecting these one-way clutches. In document D2 all rollers, i.e. the impression roller, the form roller, the inking roller and the duct roller, were driven during normal operation by the main drive source. A metering roller was not disclosed by document D2. In the printer according to document D3 a throw-off of the relief cylinder also switched off the main drive source, in contrast to the invention, where during normal operation the form roller also in its throw-off position continued to be driven by the main drive source. Thus even if the person skilled in the art would have combined the teachings of the documents D1, D2 and D3 he would not have arrived at the varnish coater according to claim 1 of the main request.

Claim 1 according to the first and second auxiliary request, respectively, defined three throw-on/throw-off positions of the form roller, blanket cylinder and impression cylinder, as well as the means for obtaining these positions. These positions corresponded to run-up, normal printing and an interruption, respectively, and facilitated cleaning, allowed checking of the coating operation while the blanket cylinder was in the throw-off position, and allowed after an interruption to restore the coating condition to the one before that

interruption. These positions and the means for obtaining them were neither suggested by documents D1, D2 or D3, nor by document D4, so that the subject-matter of these claims also involved an inventive step.

VIII. The above submissions were contested by the respondents who argued essentially as follows:

The varnish coater according to the invention was a stand-alone unit in the offset rotary printing press displayed in Figure 1 of the patent in suit, see also column 1, lines 27 to 36 of the description. The appellant's argument that the varnish coater was a modified offset printing device was therefore irrelevant. The general problem the patent sought to solve, i.e. to prevent the hardening of the varnish or ink on the rollers, was well-known in the art and was not limited to offset printers, as documents D2 and D3 showed. The solution to the aforementioned problem as given in the patent in suit, viz. to employ two one-way clutches connected by a gear mechanism in order to drive the form roller by a main drive source during the coating operation, and to continue to drive the form roller by a subdrive source when the blanket cylinder was throw-off, so that the varnish or ink circulated between a pan and the form roller and was not hardened, was also already disclosed in documents D2 and D3.

Since the fields of offset printing, aniline printing and varnish coating were closely related fields, the person skilled in the art of varnish coaters, who was confronted with the problem of preventing hardening of the varnish would consult the documents D2 and D3 concerning the related problem of rapid drying ink. Nothing inventive could be seen in employing an additional metering roller in the device according to document D2, since this document suggested "to provide

known means to adjust the film of ink on the inking or duct rollers" (see also page 4, line 128). The case that a throw-off of the relief cylinder in document D3 also switched the voltage of the subdrive source, was only a particular embodiment; such a switching was not an essential feature of the aniline printer according to the document D3. By combining document D1 with either document D2 or document D3 the person skilled in the art would arrive at the varnish coater according to claim 1 of the main request.

The throw-on/throw-off positions of the form roller, blanket cylinder and impression cylinder as now claimed in claim 1 according to the first auxiliary request were well-known in the art, see e.g. document D4, and were necessarily also present in the printing device according to D3. Document D4 showed a combined dampening-inking device for an offset printer. Figures 4, 6 and 8 of this document disclosed already substantially the three positions now claimed, i.e. a pre-dampening of the dampening cylinder, normal printing and an interruption position. The additional features of the second auxiliary request, viz. cam means having small and large diameter portions, were merely constructional details, which were within the ordinary practice of the person skilled in the art. Consequently, the claims according to the first and second auxiliary request were not allowable either.

IX. At the end of the oral proceedings the Chairman closed the debate and announced that the decision would be given in writing.

Reasons for the Decision

1. Admissibility of the new sets of claims with respect to Article 123(2) and (3) EPC.

1.1 Claim 1 according to the main request differs from claim 1 as granted in that the feature (e), viz. "a subdrive source (30) for driving said upstream rollers (41, 54)" is transferred to the characterizing part, and in that:

- the phrase "said form roller is driven" in the characterizing part of the claim is replaced by the phrase "said form roller (68) - irrespective of the throw-on and throw-off operation between the blanket cylinder (23) and the form roller (68) - is driven by one of the two drive sources which has a higher rotational speed, namely" (denoted by (h.4)), and
- the feature "wherein in both cases said upstream rollers, namely a pan roller (41) and a metering roller (54) are driven by the subdrive source (30)", is added (denoted by (h.5)).

The amended feature (h.4) is disclosed on page 22, lines 2 to 8, of the application documents as filed (cf. column 11, lines 54 to 61, of the patent specification). The additional feature (h.5) is disclosed on page 16, lines 10 to 13 and lines 20 to 22, of the application as originally filed (cf. column 9, lines 5 to 9, and lines 16 to 19, of the patent specification).

1.2 Claim 1 according to the first auxiliary request is further characterized by means for defining three throw-on/off positions of the form roller. These means are shown in Figure 6 of the application documents as filed (also Figure 6 of the patent specification).

The first position (i.1) is disclosed on page 13, lines 1 to 9, of the application documents as filed (cf. column 7, lines 34 to 44, of the patent specification).

The second position (i.2) is disclosed on page 13, lines 10 to 16, and in Figure 6 of the application documents as filed (cf. column 7, lines 44 to 52, and Figure 6 of the patent specification).

The third position (i.3) is disclosed on page 20, lines 6 to 9, of the application documents as filed (cf. column 10, line 62, to column 11, line 1, of the patent specification).

1.3 Feature (i) according to the second auxiliary request is disclosed on page 13, lines 1 to 5, page 13, line 25, to page 14, line 2, page 18, lines 10 to 16, and page 20, lines 6 to 9 (column 7, lines 34 to 39, column 7, line 61, to column 8, line 1, column 10, lines 3 to 10, and column 10, line 62, to column 11, line 1, of the patent specification).

1.4 The dependent claims 2, 3 and 4 of the main request, and of the first and second auxiliary request are based on the claims 2, 4 and 5 of the patent as granted, respectively.

1.5 It follows from the above that the new sets of claims do not contain subject-matter which extends beyond the content of the application as filed. Due to the inclusion of additional features with respect to claim 1

as granted the protection conferred by the claims has not been extended. Since these facts were no longer disputed by the respondents, a further substantiation is not necessary.

Therefore, the new sets of claims do not contravene the provisions of Articles 123(2) and (3) EPC.

2. *Admissibility of the document D4*

2.1 The respondent I cited document D4 for the first time during the oral proceedings before the Board. This document was cited against the additional features of claim 1 according to the first auxiliary request, which were filed for the first time by the appellant on 6 October 1995, i.e. about one month before the oral proceedings, and had not been the subject-matter of any claim before.

2.2 After having given the parties the opportunity to study the document D4, the Board admitted it in the proceedings, which was not objected to by the appellant.

3. *Novelty - main request, first and second auxiliary request*

It is not disputed by the parties that none of the cited documents discloses all the features of claim 1 according to the main request, first or second auxiliary request. There is no need for further substantiation of this matter.

The subject-matter of claim 1 according to the main request, first and second auxiliary request is therefore new within the meaning of Article 54 EPC.

4. *Closest state of the art, technical problem and solution*

4.1 There is general agreement among the parties and the Board that document D1, upon which the preamble of the independent claim 1 is based, represents a suitable starting point to assess inventive step.

This document discloses (see column 3, line 53, to column 4, line 50 and Figure 3) a varnish coater for a printed product, comprising an upstream duct roller (18) and a metering roller (19) for picking up and metering varnish, a form roller (19) which is brought into contact with the duct roller (19) to receive the varnish therefrom, a blanket cylinder (15) which in its throw-on position is brought into contact with said form roller (17) and an impression roller (14). The impression roller is assumed to be driven, although a drive source for driving it is not disclosed as such (cf. feature (d) of claim 1 of the patent in suit).

4.2 It is the object of the present invention to improve the quality, i.e. the thickness uniformity, of the varnish film to be produced on the surface of the printed product and to prevent the hardening of the varnish on the form roller (cf. the description of the patent as granted, column 2, lines 60 to 65).

The Board is satisfied that this object is achieved by the varnish coater according to claim 1 of the main request, which has not been contested by the respondents.

4.3 The principle of the claimed solution consists in that a subdrive source is provided that drives the pan roller and the metering roller, so that a speed differential is created between the pan roller and the metering roller on the one hand, and the form roller on the other hand,

clutches connected by a gear mechanism are arranged between this subdrive source and the form roller and between the blanket cylinder and the form roller, respectively, so that the form roller is driven by either the main drive or by the subdrive source, depending on which of the two drives has the higher rotational speed. When the form roller is driven by the subdrive source, the varnish circulates in a path between the varnish pan and the form roller and will not be hardened. When the form roller is driven by the main drive, this is done irrespective of the throw-on and throw-off operation between the blanket cylinder and the form roller.

- 4.4 The Board notes that, when the form roller is driven by the subdrive source (30) via the second one-way clutch (100), only one of the two possibilities of the addendum in feature (h.4), viz. "irrespective of the throw-on and throw-off operation between the blanket cylinder (23) and the form roller (68)" is realized, since in that case the blanket cylinder (23) is separated from the form roller (68) (cf. feature (h.4.2) and column 9, lines 14 to 22 of the patent description).

It is also clear from the wording of the claim that when the form roller is driven by the main drive source this is done via the blanket cylinder and said first one-way clutch - irrespective of the throw-on and throw-off operation between the blanket cylinder and the form roller.

5. *Inventive step - main request*

- 5.1 The varnishes used for coating purposes normally have a low viscosity and are often applied to the entire surface of the substrate to be covered. The practitioner is aware of the analogy with dampening systems used in

offset printing machines. When however only selected surface areas of the substrate are to be coated, the function of a varnishing system is quite similar to that encountered in inking systems for applying quickly drying ink. Therefore, the Board cannot see why the skilled person in the art of varnish coaters and/or dampening systems, should restrict his search to these type of devices and would leave inking systems out of consideration.

- 5.2 Document D3 relates to an aniline printing device and addresses the problem of how to provide a speed differential between a pan roller and a form roller during normal printing, and at the same time allowing the pan roller and the form roller to continue to be driven during a printing pause in order to prevent hardening of the ink (see column 1, lines 1 to 6, and column 2, lines 30 to 36).

This problem is solved (see column 2, line 36, to column 3, line 11, and column 4, line 20, to column 5, line 17) by driving the form roller (7) during the printing operation by a main drive source via a one-way clutch (19), and during the printing pauses by a subdrive source (20) via a second one-way clutch (28), whereby the pan roller (6) is driven by this subdrive source (20) both during the normal printing operation and during the printing pauses.

- 5.3 Document D3 thus discloses that the form roller is driven by that one of the two drive sources which has a higher rotational speed, namely either by the main drive source via the relief cylinder and said first one-way clutch as long as the main drive source is running, or by said subdrive source via the second one-way clutch when said relief cylinder is separated from said form

roller and when said main drive source is stopped at the same time.

- 5.4 Document D3 is silent about the feature that when the form roller is driven by the main drive, this is irrespective of the throw-on and throw-off operation between the blanket/relief cylinder and the form roller. The Board, however, cannot recognize any positive contribution to inventive step in this feature, since the advantages of providing the option to locate the blanket cylinder in the thrown-off position while continuing to drive the form roller via the blanket cylinder by the main drive source (e.g. for cleaning purposes or checking the varnish layer or temporarily interrupting the coating process while avoiding asynchronous rotations between the form roller and the blanket cylinder) can be readily contemplated in advance by the skilled person.
- 5.5 The appellant has argued that in the printer according to document D3 a limit switch (47) acting together with the relief cylinder is provided for switching over the subdrive source from the mains voltage to the circuit of the main drive, i.e. the voltage of the subdrive source is switched when the relief cylinder is thrown-on or thrown-off (see column 3, lines 53 to 59 and Figures 5 and 6). It would follow that a throw-off of the relief cylinder is connected with a switch-off of the main drive source. Since the form roller according to the invention is driven via the blanket cylinder - irrespective of the throw-on and throw-off operation between the blanket cylinder and the form roller, such a switch-off of the main drive source would point away from the invention.

The provision of a limit switch in document D3 to switch the voltage of the subdrive source does, however, not necessarily imply that the main drive source must be switched-off when the relief cylinder is thrown-off. Moreover, such a limit switch is an optional feature for a specific embodiment of the invention according to document D3. Consequently, the above arguments are not convincing.

- 5.6 It follows from the above that the person skilled in the art, starting from a varnish coater according to document D1, would have regarded the inclusion of one-way clutches connected by a gear mechanism according to document D3 with the feature (h.4) in the varnish coater according to document D1 as a normal design option in order to solve the stated problem, and thus would have arrived at a varnish coater according to claim 1 of the patent in suit.
- 5.7 The subject-matter of claim 1 according to the main request, therefore fails to involve an inventive step within the meaning of Article 56 EPC.
- 5.8 Also document D2 substantially discloses the gist of the invention. This document discloses (see page 4, lines 99 to 124, and Figure 7) a printing device for printing with rapid drying inks, comprising an impression cylinder (a), a roller (b), a form roller (inking roller (c)) and a pan roller (duct roller (d)). During normal operation a main drive source drives roller (a), (b) and (c) through pulley (20), gears (e, f) and a first one-way clutch (ratchet gear (21)) in combination with gear train (o, g, h, k). When the printer is brought to rest, a slow running motor (23) drives roller (c) through a second one-way clutch (ratchet gear (25)) and gear train (o, g, h, k). As an example of rapid drying inks varnish inks are mentioned (see page 1, line 14).

Document D2 also discloses that the roller (c) and the roller (b) can be separated during a printing pause, in such a way that the impression roller (a) and the roller (b) are brought to rest while the rollers (c) and (d) remain in operation (see page 4, lines 79 to 89).

- 5.9 The appellant also submitted that the period of more than 16 years between the date at which both the documents D1 and D3 were available and the priority date of the patent in suit, in a technical field wherein extensive development efforts were made, was an indication that the claimed subject-matter was not obvious, referring inter alia to decisions T 203/93 and T 330/92 (both not intended for publication in the Official Journal). In the referred cases the elements which could have led to the invention were known for more than 11 and 17 years, respectively.

Although the age of a citation may be taken in consideration, it cannot as such disqualify the citation for use in assessing inventive step. In the present case, the integration of a varnish coater in a printing device had in principle been solved long ago. Document D3 is a proof for that fact. No particular activity in the respective technical field to solve the special problem on which the patent in suit is based was documented by the appellant.

6. *Inventive step - first auxiliary request*

- 6.1 Claim 1 according to the first auxiliary request is further characterized by: "means (84, 85, 81, 81a, 81b, 89) for defining three throw-on/off positions of the form roller".

6.2 These three positions, however, enable functions which any varnish coater - and therefore also the one disclosed in document D1 - must inevitably comprise in order to be fit for the operation it is aimed at:

- The normal production run (cf. the second position (i.2))
- A pre-dampening mode permitting to install a continuous varnish layer on the blanket cylinder before starting the normal production run (cf. the first position (i.1))
- A cleaning mode permitting to clean the varnish off the blanket cylinder before any longer interruption of the printing process and thus avoiding the formation of a dry varnish layer on the blanket cylinder ((cf. the third position (i.3))

6.3 For the above reasons, the subject-matter of claim 1 according to the first auxiliary request also lacks an inventive step within the meaning of Article 56 EPC.

7. *Inventive step - second auxiliary request*

7.1 Claim 1 according to the second auxiliary request is further characterized by the feature:

"a throw-on and -off mechanism (74, 75) of the form roller (68) comprising cam means (81) having large and small diameter portions (81a, 81b) limiting the contact force of the form roller (68) with respect to the blanket cylinder (23) when the blanket cylinder (23) is respectively in its throw-on or throw-off position with respect to the impression roller (11)".

- 7.2 The appellant did not claim any surprising or unexpected effect due to the inclusion of this feature. In the view of the Board, the person skilled in the art of printing or coating machines is well aware of the various means, such as camshafts actuated by pistons, to locate the various rollers in their respective positions. The skilled person would select the shape of the cams according to the circumstances. Hence, in the additional feature according to the second auxiliary request, constructional details are suggested which come within the scope of the customary practice followed by persons skilled in the art.
- 7.3 Consequently, the subject-matter of claim 1 according to the second auxiliary request also lacks an inventive step within the meaning of Article 56 EPC.
8. Neither the main request nor the first or second auxiliary request of the appellant meet the requirement for maintaining the patent in amended form (cf. Article 102(3) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:


A. Townend

The Chairman:


G. Gall

