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D E C I S I O N
of 9 November 1999

Case Number: T 0476/97 - 3.2.5

Application Number: 90250299.6

Publication Number: 0431715

IPC: B41F 27/12

Language of the proceedings: EN

Title of invention:

Place replacing apparatus for printing press

Patentee:

Komori Corporation

Opponent:

MAN Roland Druckmaschinen AG
Koenig & Bauer Aktiengesellschaft
Heidelberger Druckmaschinen AG
Koenig & Bauer AG

Headword:

-

Relevant legal provisions:

EPC Art. 123(2), 56

Keyword:

"Extension of the subject-matter of the claims beyond the
content of the application as filed (main request, yes)"
"Inventive step (auxiliary request, yes)"

Decisions cited:

-

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0476/97 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 9 November 1999

Other party:
(Opponent)

MAN Roland Druckmaschinen AG
Mühlheimer Strasse 341
63075 Offenbach (DE)

Appellant:
(Opponent)

Koenig & Bauer Aktiengesellschaft
Planeta-Bogenoffsetmaschinen
Friedrich-List-Str. 47-49
01445 Radebeul (DE)

Appellant:
(Opponent)

Heidelberger Druckmaschinen AG
Kurfürsten-Anlage 52-60
Postfach 10 29 40
69019 Heidelberg (DE)

Representative:

Stoltenberg, Heinz-Herbert Baldo
c/o Heidelberger Druckmaschinen AG
Kurfürsten-Anlage 52-60
69115 Heidelberg (DE)

Other party:
(Opponent)

Koenig & Bauer AG
Postfach 6060
97010 Würzburg (DE)

Respondent:
(Proprietor of the patent)

Komori Corporation
11-1, Azumabashi 3-chome
Sumida-ku
Tokyo (JP)

Representative:

Patentanwälte Wenzel & Kalkoff
Postfach 73 04 66
22124 Hamburg (DE)

Decision under appeal:

Interlocutory decision of the Opposition Division
of the European Patent Office posted 10 March
1997 concerning maintenance of European patent
No. 0 431 715 in amended form.

Composition of the Board:

Chairman: A. Burkhart

Members: P. E. Michel

J. H. P. Willems

Summary of Facts and Submissions

- I. Two of the four opponents (O2 and O3) lodged appeals against the interlocutory decision of the Opposition Division rejecting the opposition and maintaining the patent No. 0 431 715 in amended form.

Opposition was filed against the patent as a whole based on Article 100(a) EPC (lack of inventive step) and Article 100(c) EPC (subject-matter extending beyond the content of the application as filed)

The Opposition Division held that the grounds of opposition based *inter alia* on E1 (JP-A-61-248834) and E3 (JP-A-62-221542) did not prejudice the maintenance of the patent as amended.

In the appeal procedure, one of the appellants (O3) introduced a new document:

E4: JP-A-59-22755

- II. Oral Proceedings were held before the Board of Appeal on 9 November 1999, attended by the patentee as respondent, one of the appellants (O3) and another opponent (O1).

- (i) The appellant requested that the decision under appeal be set aside and the patent be revoked.
- (ii) The respondent requested as a main request that the appeal be dismissed and the patent be maintained in the amended form as maintained by the opposition division and as an auxiliary

request that the patent be maintained on the basis of amended claims filed at the oral proceedings.

- (iii) The main request of the respondent includes a single independent claim which reads as follows:

"A plate replacing apparatus for a printing press having plate lockup devices (6, 30) arranged in a gap (2) of a circumferential surface of a plate cylinder (1) to grip the two ends of a plate wound around said circumferential surface, and comprising a plate holding unit (83) including at least one of an old plate holding mechanism for receiving and holding an old plate (89), removed upon release of said plate lockup devices (6, 30) and pivotal movement of said plate cylinder (1), and a new plate holding mechanism for feeding a new plate (105) to said plate cylinder (1), said plate holding unit comprising a proximal end and a distal end and being supported above said plate cylinder such that a distal end of said plate holding unit is movable towards and away from said plate cylinder to enable plate exchange, characterized in that said plate replacing apparatus further comprises an apparatus (316, 317, 318) adapted to displace the plate holding unit (83) essentially rectilinearly in its direction of extension between said proximal and distal ends into and away from an area above said printing press."

- (iv) The auxiliary request of the respondent also includes a single independent claim which

corresponds to the independent claim of the main request with the following expression introduced after the term "plate holding unit (83)" at line 19:

"supported on a fulcrum formed obliquely above said plate cylinder to be movable up and down".

III. At the oral proceedings, the appellant and the other opponent argued essentially as follows:

The document E4 was introduced in response to amendments made by the patentee at the oral proceedings before the opposition division. The document should therefore be admitted into the procedure.

Main request

The expression "adapted to displace the plate holding unit (83) essentially rectilinearly in its direction of extension" as used in claim 1 is not allowable in view of Article 123(2). The application as originally filed only discloses vertical movement of the plate holder.

Auxiliary request

There are no objections under Article 123 EPC to claim 1 as amended. Novelty of the subject-matter of the claim is also not contested.

The subject-matter of claim 1 lacks an inventive step. There may well be an invention in the concept of suspending the plate holder on the next printing press, as in the preferred embodiment of the invention, but

this is not claimed. The closest prior art is E1. If the object of the invention is to replace the swinging movement of the plate holder, the solution is available from E4, which discloses vertical rectilinear movement of the plate holder.

IV. At the oral proceedings, the respondent argued essentially as follows:

The late filed document E4 is no more relevant than the previously cited prior art and should not be admitted into the procedure.

Main request

Rectilinear movement of the plate holder is disclosed in the application as filed, in particular in the passage at column 3, lines 38 to 46 and in claim 4.

Auxiliary request

The apparatus of E1 and the apparatus of E4 carry out essentially the same function and thus merely represent alternatives available to the person skilled in the art which cannot be combined.

Reasons for the Decision

1. *Admissibility of the late filed document*

E4, which was only introduced in the appeal procedure, discloses a plate holding unit which is movable

essentially rectilinearly in its direction of extension between its proximal and distal ends. The disclosure of this document is thus relevant to the feature introduced into claim 1 during the oral proceedings before the opposition division. E4 is considered to be more relevant than E3 in this respect, since the plate holder of E3 is not displaced in its direction of extension between its proximal and distal ends. E4 is accordingly admitted into the proceedings in accordance with Article 114(1) EPC.

Main request

2. *Amendments*

2.1 Claim 1 includes the feature that the plate holding unit is displaced "essentially rectilinearly in its direction of extension between said proximal and distal ends". Since the orientation of the plate holding unit during the displacement is not specified in the claim, the claim includes rectilinear movement in the direction of extension between the proximal and distal ends of the plate holding unit in whatever direction the plate holder is orientated in, this direction not being specified in the claim.

2.2 The application as filed does not, however, disclose displacement of the plate holding unit in anything other than the vertical direction. Thus, the description of the preferred embodiment and claim 4 refer to vertical movement. It is noted that, whilst claim 4 as granted uses the term "up and down", claim 4 as originally filed specified that the plate holding unit is vertically movable. The paragraph at page 6,

lines 7 to 15, refers to the loader being suspended in a storage position and moved upward for inspection and maintenance of the dampening unit. This passage thus refers briefly to the vertical movement discussed in more detail with reference to Figures 18 to 22. The fact that the plate is suspended means that it is vertically orientated, so that movement of the plate holder rectilinearly in its direction of extension between its proximal and distal ends is vertical movement and the reference to upward movement refers to upward movement in the vertical direction.

- 2.3 The subject-matter of claim 1 thus extends beyond the content of the application as filed and the main request is not allowable in view of Article 100(c) EPC.

Auxiliary Request

3. *Amendments*

Claim 1 specifies that the plate holding unit is supported on a fulcrum formed obliquely above said plate cylinder to be movable up and down essentially rectilinearly in its direction of extension between its proximal and distal ends into and away from an area above the printing press. The term "up and down" is construed to mean substantially vertically in the context of the claimed apparatus, since the entire disclosure of the patent in suit is concerned with vertical movement of the plate holding unit. The subject-matter of claim 1 thus does not extend beyond the content of the application as filed, so that the auxiliary request is allowable in view of Article 100(c) EPC.

4. *Prior Art*

4.1 E1 discloses a plate changing apparatus having all the features of the preamble of claim 1. The plate holding unit is mounted on an arm (23) so as to be pivotable about an axis (25) between three positions (A,B,C). In order to allow an old plate to be removed or a new plate introduced, the plate holder is pivoted into a position (A) in which it is substantially vertical. During printing, the plate holder is pivoted above the printing press into a position (B) so as not to interfere with printing operations. In order to enable plate exchange, the plate holder is pivoted into a position (C), in which its distal end is adjacent the plate cylinder. In this position, an old plate may be removed from the plate cylinder or a new plate supplied to the plate cylinder.

4.2 E4 discloses a plate changing apparatus in which the plate holding unit is combined with a safety cover (22) and the combined plate holder and safety cover is mounted on an arm (24) which is pivotable about an axis (23). The distal end of the combined plate holder and safety cover is guided so as to move vertically. During printing, the combined plate holding unit and safety cover occupies a lowered position as shown in continuous lines in the figure accompanying the abstract of E4, in order to protect printing workers from possible injury by the printing rollers and cylinders. In order to enable plate exchange, the plate holder is raised into the position shown in broken lines, in which a new plate (39) may be fed to the plate cylinder or an old plate removed from the plate

cylinder through a pair of rollers (42).

5. *Inventive step*

5.1 Closest prior art

As accepted by all the parties, the closest prior art is represented by document E1, whose disclosure (see above) corresponds to the preamble of claim 1.

5.2 Problem underlying the invention

Whilst the reason for the vertical movement of the plate holder in the preferred embodiment of the patent in suit is to permit inspection and maintenance of the dampening unit, this cannot be regarded as constituting the objective problem to be solved when starting from E1, since, in the stand-by position (B) of E1, complete access to the printing press is afforded.

A problem associated with the apparatus of E1 may be seen in that a large volume of space is required above the printing press in order to allow the plate holder to be swung up into position (C) during printing, as may be seen from Figure 3.

5.3 Solution

According to claim 1, the above problem is solved in that the plate replacing apparatus further comprises an apparatus (316, 317, 318) adapted to displace the plate holding unit (83) supported on a fulcrum formed obliquely above said plate cylinder to be movable up and down essentially rectilinearly in its direction of

extension between said proximal and distal ends into and away from an area above said printing press. The space requirement above the press is thereby reduced.

This solution is not suggested by the remaining cited prior art document, E4, which is not concerned with the above problem. E4 is concerned rather with operating safety which is achieved by providing a safety cover enabling the printing cylinders to be contained in a closed housing during printing, the cover only being opened for maintenance and plate exchange. The person skilled in the art thus has no incentive to combine E1 and E4.

Even if it was proposed to combine the teachings of E1 and E4 in some way, it is not clear how such a combination could be achieved. Thus, E1 teaches that, during printing, the plate holder must be raised above the printing press so as not to interfere with the printing operations. E4 on the other hand teaches that the plate holder must be lowered during printing so as to improve operating safety.

In addition, it is an essential feature of E1 that the distal end of the plate holder be pivoted into a position adjacent the plate cylinder in order to enable plate exchange to take place. The mechanism of E4, however, prevents such a movement from taking place in view of the fact that the distal end of the plate holder is guided so as to move in a vertical direction by means of bolts (33) guided in channels (32).

The teachings of these two documents are thus incompatible.

5.4 The subject-matter of claim 1 thus involves an inventive step. Claim 2 is appendant to claim 1 and similarly involves an inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent with the following documents:

Claims: 1 and 2 according to the auxiliary request filed during the oral proceedings of 9 November 1999

Description: pages 3 and 8 as filed during the oral proceedings of 9 November 1999

pages 1, 2, 4 to 7 and 9 to 11 and figures as maintained by the opposition division.

The Registrar:

The Chairman:

A. Townend

A. Burkhart