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D E C I S I O N
of 25 June 2002

Case Number: T 0873/99 - 3.5.2

Application Number: 92118609.4

Publication Number: 0540022

IPC: G07B 17/02

Language of the proceedings: EN

Title of invention:

Postage meter having auto dating device

Patentee:

PITNEY BOWES INC.

Opponent:

NEOPOST LTD

Headword:

-

Relevant legal provisions:

EPC Art. 56, 123(2)

Keyword:

"Inventive step - main request, first auxiliary request (no)"

"Added subject-matter - second auxiliary request (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0873/99 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 25 June 2002

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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 27 July 1999
concerning maintenance of European patent
No. 0 540 022 in amended form.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: J. M. Cannard
P. Mühlens

Summary of Facts and Submissions

I. The opponent appealed against the decision of the opposition division concerning the maintenance of European patent No. 0 540 022 in amended form in accordance with the proprietor's request filed on 27 May 1999 during oral proceedings before the opposition division.

II. The following prior art documents:

D1: US-A-4 649 489 and

Div1: US-A-4 060 720

considered during the proceedings before the opposition division remain relevant to the present appeal.

III. On 23 May 2002 the respondent proprietor filed by fax:

claims 1 to 7 of a main request, claims 1 to 7 according to a first auxiliary request and claims 1 to 7 according to a second auxiliary request.

Independent claims 1 and 7 of the main request read as follows:

Claim 1:

"A postage metering combination having a date setting means (44) and printing means (42) for printing postage or other information on an envelope and having a calendar clock module (40), a microcomputer (31) connected to receive current date information from said calendar clock module, and a date printing means having

a date printing mechanism (42) for selectively printing posting date information in response to a date setting mechanism (44) or ducking the printing of date information on said envelope, said date printing means being connected to said microcomputer for receiving information for advancing the date to be printed or causing said date printing means to duck printing of said date information, further comprising:

date entry means (21, 23) having first and second date entry setting modes;

said microcomputer being connected to said date entry means and being programmed to respond to said first mode (68) to cause said microcomputer to inform said date setting mechanism to set said date printing means to print the current date information, and to said second mode (58, 88) to cause said date printing means to duck printing of said current date information;

characterised in that said date entry means (21, 23, 25) has a third date entry setting mode, said microprocessor being further programmed to respond to said third mode (84) to cause said date printing means to incrementally advance in selectable increments, in advance of the current date information received from the calendar clock module."

Claim 7:

"A method of metering postage in which a microcomputer (31) receives current date information from a calendar clock module (40), and a date printing means (42) selectively prints posting date information in response to a date setting mechanism (44) or ducks the printing

of date information, said date printing means receiving from the microcomputer information for advancing the date to be printed or causing said date printing means to duck printing of said date information and said microcomputer responding to entry (21) of a first mode (68) to cause said microcomputer to set said date printing means to print the current date information, a second mode (23, 58, 88) to cause said date printing means to duck printing of said current date information, and a third mode (25, 82, 84) to cause said date printing means to incrementally advance in selectable increments, in advance of the current date information received from the calendar clock module."

Claims 2 to 6 are dependent on claim 1.

Claim 1 according to the first auxiliary request differs from claim 1 according to the main request in that the feature "and said microcomputer is further operable to return the date printing means to the current date following said incremental advance in response to the mode of the date entry means being changed from the third mode to the first mode" has been incorporated at the end of the claim.

A corresponding feature has been added at the end of the method claim 7 according to the first auxiliary request.

- IV. During the oral proceedings held on 25 June 2002, the respondent filed claims 1 to 7 according to a new second auxiliary request, replacing the previous second auxiliary request.

Claim 1 according to the second auxiliary request

differs from claim 1 according to the main request in that two paragraphs:

"said data entry means also has first and second keys (21, 23) operable for selecting said first and second date entry modes, respectively, and a third key (25) arranged so that, for each actuation thereof, the date printing means is caused to advance by a single date increment; and

said microcomputer is further operable, in response to selecting the first mode by the first key, to return the date printing means to the current date following said incremental advance"

have been added at the end of the claim.

Claim 7 according to the second auxiliary request differs from claim 7 according to the main request in that the words "such that, for each actuation of the third key, the date printing means is caused to advance by a single date increment, the microcomputer being further operable, in response to selecting the first mode using the first key, to return the date printing means to the current date following the incremental advance" have been added at the end of the claim.

V. The arguments of the appellant opponent can be summarised as follows:

Claim 1 according to the main request did not involve an inventive step in view of documents D1 and Div1.

Claim 1 was delimited against D1, which was the closest prior art, and merely differed from D1 by the third

mode in which the date to be printed could be advanced in selectable increments, in advance of the current date. In the automatic date setting mode of D1 each change in the date is reported from the calendar module to the microprocessor by a pulse (column 3, lines 45 to 53). The technical problem of post dating mail pieces was well known and resulted from a requirement of the postal authorities. To solve this problem, it was obvious to the skilled man to modify the postage machine according to D1 so as to be able to advance the date in a manual setting mode by entering a pulse from the keyboard for each day in advance of the current date. The expression "selectable increments" in claim 1 meant that the date advance was selectable by repeating the required number of times an increment of one day (see Figure 3B, block 80, "Set N" and column 5, lines 3 to 6). D1 thus disclosed advancing the date in selectable increments.

Div1 disclosed all the features of claim 1 of the main request except for the ducking mode. According to Div1, the printing date could be advanced by a selectable number of increments of one day, thus in selectable increments. Ducking the printing of the date was a common practice in the art and was independent of any means for setting the date to be printed. The combination of the automatic and manual date setting modes disclosed in Div1 with the well known option of ducking printing did not provide any synergy effect.

Since manually returning to the current date following the incremental advance, and advancing the date by a single date increment for each actuation of a key to cause an advance by a selectable increment were trivial, claim 1 according to the first and second

auxiliary requests likewise lacked an inventive step.

VI. The arguments of the respondent proprietor can be summarised as follows:

The cited prior documents neither anticipated nor suggested the subject-matter of claims 1 and 7 of the main request.

Claim 1 differed from the postage machine according to D1, the closest prior art, in various respects. The expression "selectable increments" correctly interpreted on the basis of the description of the patent in suit clearly specified that the size of each increment was selectable (column 1, line 54 to column 2, line 5). The embodiment described in column 5, lines 1 to 14, which showed as an example an increment of one day, was consistent with this interpretation. Since D1 only disclosed a fixed increment of one day, it did not disclose an incremental advance of the date in selectable increments as recited in claim 1. Entering the date to be advanced to by selecting the day, month or year, as described in the patent in suit, was not to be understood as an alternative to the manual date setting mode in which the date was advanced in increments, but as a supplementary mode. D1 did not disclose a manual date setting mode in which the date printing means was advanced in advance of the current date information. The date entry means recited in claim 1 were not disclosed by D1: in D1 the keyboard was merely used for inputting postage values or initiating the duck mode. The calendar setting operation was always automatically performed when the machine was turned on.

Entering a desired future date by advancing the date in increments of a selectable size was not an obvious solution to the technical problem of post dating mail pieces in a quick and easy way.

Even if Div1 mentioned post dating mail, it did not disclose a date setting in selectable date advance increments nor a duck mode, and was therefore less relevant than D1.

The independent claims according to the first and second auxiliary requests comprised further novel and inventive features over the prior art.

- VII. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

- VIII. The respondent (patentee) requested that the patent be maintained in amended form on the basis of claims 1 to 7 of the main request filed by fax on 23 May 2002, or on the basis of claims 1 to 7 of the first auxiliary request filed by fax on 23 May 2002 or on the basis of claims 1 to 7 of the second auxiliary request filed in the oral proceedings.

Reasons for the Decision

- 1. The appeal is admissible.

- 2. The novelty of the subject-matter of independent claims 1 and 7 according to the present requests has not been disputed.

Main and first auxiliary requests

3. In the decision under appeal, document D1, which relates to a postage metering combination comprising a date setting means, means for printing postage information on an envelope, a calendar clock module and a microprocessor (MC), was considered as the closest prior art. D1 describes three modes of setting the date. In one of the modes the date to be printed is entered manually in the machine (column 3, lines 8 to 32); the other modes are an automatic date setting mode (column 3, lines 37 to 58) and a duck printing mode (column 3, lines 59 to 67). The postage metering combination known from D1 (Figures 1, 2A, 2B) also has further features of claim 1 as explained below:

3.1 The printing means comprises a date printing mechanism (Figure 1: stepping motors SM; column 4, lines 10 to 18: type wheels) for printing postage date information in response to a date setting mechanism (stepping motor control ST) or ducking the printing of date information on the envelope. The microprocessor is programmed to inform the date setting mechanism to set the date printing means.

3.2 According to whether a (first) automatic date setting mode or a (second) duck printing mode has been selected, the microprocessor may be connected to receive current date information from the calendar clock module and programmed to respond to the calendar clock module to set the date printing means to print the current date information (column 3, lines 37 to 53) or, (in the second mode) to duck printing of the current date information (column 3, lines 59 to 67). The date printing means are connected to the

microprocessor for receiving the information for advancing the date to be printed or for causing the printing means to duck printing.

4. Instead of performing an automatic setting of the current date, the microprocessor in D1 may be connected, in a manual date entry mode, to receive a date to be advanced to from the postage value keyboard (column 3, lines 8 to 24). In this manual mode of D1 (as in the automatic mode), **the date printing means are incrementally advanced in a number of increments** to set the date to be printed, which is stored in the microprocessor and compared with the date corresponding to the position of the print wheels, to advance these wheels incrementally until the comparison shows no deviation (Figures 2A, 2B; column 3, lines 45 to 53; column 4, lines 50 to 58).
- 4.1 The third date entry setting mode as recited in claim 1 is so broadly formulated as to cover an arrangement in which the date to be advanced to is selected by entering the day, month or year. This interpretation is consistent with the description of the patent in suit which recites that "other switches may be provided for selecting the day, month or year to be advanced" (column 2, lines 14 to 16).
- 4.2 According to the respondent, D1 does not disclose date printing means which are incrementally advanced in selectable increments as recited in claim 1, which, according to him, should be interpreted to mean that the increments are of selectable size, as supported in the description at column 1, line 56 to column 2, line 5. However this passage of the description does not imply that the microprocessor is programmed to

advance the date printing means, which are of an unspecified type, in the same incremental way as the date setting is entered. The description of the patent in suit contains no disclosure of, or support for, printing means which are incrementally advanced in increments of selectable size. Thus, the Board interprets the expression "selectable increments" in claim 1 to be broad enough to cover the situation in which the number of increments (not their size) is selectable.

- 4.3 Consequently, D1 also discloses a manual date entry setting mode for entering a date to be advanced to and date printing means in this manual mode which are incrementally advanced in selectable increments, as recited in claim 1.

5. However, according to D1, the microprocessor (or logic circuit) causes the automatic setting of the date printer to the actual date using the calendar module when the machine is turned on (column 3, lines 47 to 49; column 4, lines 7 to 9). Moreover, D1 does not explicitly disclose any means for **selecting** the automatic date setting mode or the manual date setting mode, or for switching between these two modes, which are not explicitly disclosed as alternative modes of operation of one and the same machine. D1 thus does not disclose the provision in the date entry means of a third date entry setting mode whereby, in response to the third entry mode, the date printing means are advanced in selectable increments, **in advance of the current date received from the calendar module**, as recited in claim 1.

6. Starting from the prior art known from D1, the

objective problem underlying the present invention (according to the main and first auxiliary requests) can thus be seen as providing means for post dating the mailings to be posted some time in the future and for returning to the automatic mode of setting of the current date. This corresponds to the technical problem identified in the decision under appeal and results from a requirement of the postal authorities, see the patent (column 1, lines 34 to 45) or document Div1 (column 4, line 66 to column 5, line 15).

7. To solve the technical problem of providing means for post dating mailings, it is self-evident for the skilled person starting from the postage machine of D1, which is equipped with a calendar module for automatically setting the date to be printed, to provide it with date entry means having different setting modes allowing the customer to select the automatic setting mode or a manual setting mode, and to program the microprocessor to cause it to respond to the manual setting mode (called the third setting mode in claim 1) to set the date printing means to print the date entered through the keyboard of the machine.

7.1 No technical difficulties could be expected in doing this since both modes of operation in D1 use a machine having the same constitutive elements and the same program for setting the date in the printing means, as appears in particular from Figures 1, 2A and 2B of D1 (see also point 4 above).

7.2 The provision for returning the date printing means to the current date following an incremental advance in response to the date entry means, as recited at the end of claims 1 and 7 according to the first auxiliary

request, is obvious, or the machine would have to remain in the post dating mode for ever more.

8. Hence, the obvious combination in one machine of the automatic and duck date setting modes described in D1 with the manual setting mode described in D1 results in an apparatus having all the features of claim 1 according to the main request and the first auxiliary request and the subject-matter of the claims is not to be considered as involving an inventive step within the meaning of Article 56 EPC.

Second auxiliary request

9. According the second auxiliary request, "a third key (is) arranged so that, for each actuation thereof, the date printing means is caused to advance by a single date increment". However the incorporation of this feature in claim 1 contravenes Article 123(2) EPC.
 - 9.1 It is true that claims 1, 4 and 7 of the application as filed mention date printing means which are advanced in selectable increments. But these claims do not mention a "single date increment" nor that the date printing means are caused to advance by an increment for each actuation of a third key.
 - 9.2 According to the description as filed, and more specifically to the single embodiment of realisation described with reference to Figure 3B, the operation of the third key causes the date setting to be advanced, among other possibilities, one day at a time until a desired number of days advance (N) is reached. However, neither the expression "single date increment" nor an incremental advance of the date printing means is

mentioned in the description as filed. No details of how block 84 of Figure 3B is implemented are disclosed.

10. The Board concludes therefore that the grounds for opposition mentioned in Article 100 EPC prejudice the maintenance of the patent.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

D. Sauter

W. J. L. Wheeler