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D E C I S I O N
of 11 March 2003

Case Number: T 0555/00 - 3.2.5

Application Number: 94111886.1

Publication Number: 0627320

IPC: B41J 32/00

Language of the proceedings: EN

Title of invention:
Tape printer for use with a tape cassette

Patentee:
BROTHER KOGYO KABUSHIKI KAISHA

Opponent:
ESSELTE N.V.

Headword:
-

Relevant legal provisions:
EPC Art. 76
EPC R. 25

Keyword:
"Divisional application of a divisional application (formally allowable)"
"Extension beyond the content of the parent application (yes)"

Decisions cited:
-

Catchword:

-

1. A European divisional application of a pending European patent application, i.e. the parent application, which itself was filed as a European divisional application of a then pending European patent application, i.e. the grandparent application, does not as such contravene the requirements of Article 76 EPC and Rule 25 EPC (cf. point 1.2 of the Reasons).

2. Since both the European divisional application on which the patent in suit is based and the parent application are deemed to have been filed on the date of filing of the grandparent application under Article 76(1) EPC, not only the patent in suit, but also the parent application must comply with Article 76(1) EPC. Hence, subject-matter contained in the patent in suit must be disclosed in both the parent application as filed and the grandparent application as filed (cf. point 1.5 of the Reasons). Otherwise, the patent in suit has to be revoked (cf. point 1.6 of the Reasons).

3. The EPC does not provide for the possibility of determining any effective filing date the patent in suit may profit from, and of assessing novelty and inventive step in respect of prior art published before that date, if it contains subject-matter which extends beyond the content of the parent application as filed and/or the grandparent application as filed (cf. point 1.6 of the Reasons; deviating findings: cf. decision T 904/97, point 4 of the Reasons).

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0555/00 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 11 March 2003

Appellant: (Opponent)
ESSELTE N.V.
Industriepark-Noord 30
P.O. Box 85
B-9100 St. Niklaas (BE)

Representative:
Style, Kelda Camilla Karen
Page White & Farrer
54 Doughty Street
London WC1N 2LS (GB)

Respondent: (Proprietor of the patent)
BROTHER KOGYO KABUSHIKI KAISHA
No. 15-1, Naeshiro-cho,
Mizuho-ku
Nagoya-shi,
Aichi-ken 467 (JP)

Representative:
Prüfer, Lutz H., Dipl.-Phys.
PRÜFER & PARTNER GbR
Patentanwälte
Harthauser Strasse 25d
D-81545 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 8 March 2000 rejecting the opposition filed against European patent No. 0627320 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: W. Moser
Members: W. R. Zellhuber
P. E. Michel

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition against the European patent No. 0 627 320 (patent in suit).

The opposition had been filed against the patent in suit as a whole and based on Article 100(a) and (c) EPC. The Opposition Division held that the grounds for opposition did not prejudice the maintenance of the patent in suit as granted.

II. The application underlying the patent in suit was filed as a divisional application of the European patent application No. 91 112 719.9 (publication number: 0 467 414), hereinafter parent application, which in turn had been filed as a divisional application of the European patent application No. 88 121 862.2 (publication number: 0 322 918), hereinafter grandparent application.

III. Oral proceedings were held before the Board of Appeal on 11 March 2003.

(i) The appellant requested that the decision under appeal be set aside and that the European patent No. 0 627 320 be revoked.

(ii) The respondent (patent proprietor) requested as a main request that the appeal be dismissed, or that the decision under appeal be set aside and the patent in suit be maintained on the basis of the following documents filed on 11 February 2003:

(a) claims 1 to 7 as first auxiliary request; or

(b) claims 1 to 5 as second auxiliary request; or

(c) claims 1 to 6 as third auxiliary request; or

(d) claims 1 to 7 as fourth auxiliary request; or

(e) claims 1 to 4 as fifth auxiliary request; or

(f) claim 1 as sixth auxiliary request; or on the basis of the following document filed during oral proceedings:

(g) claim 1 as seventh auxiliary request.

IV. Claims 1 to 8 of the patent in suit as granted (main request) read as follows:

"1. Tape printer (1, 130, 200) for printing an image on a tape (21, 255) located in a tape cassette (35, 135, 201) which is detachably loaded on the tape printer and has a cassette housing (90, 136, 202) provided with a tape outlet (99, 146, 253a) including:
a printer frame (3) having a tape outlet (23, 123) in a side frame portion;
printing means (83,75; 142,154; 341,347) for printing the image on the tape at a printing position defined in the tape cassette;
feeding means (101,69; 145,155; 227,349) for feeding a tape portion printed by said printing means through the

tape outlet (23) toward the outside of the cassette housing;
cutter means (49,51; 159,160; 353a,353) for cutting the tape portion to separate it from the tape located in the tape cassette, and
cutter operating means (43,45; 351) for causing the cutting operation of said cutter means,
characterized in that:
said cutter means includes a cutter element (49,51; 159,160; 353a,353) which is disposed in the tape printer in an area defined between said tape outlet (99, 146, 253a) of said cassette housing (90, 136, 202) and said tape outlet (23, 123) of the printer frame (3) in a state that the cassette (35, 135, 201) is loaded on the tape printer.

2. The tape printer according to claim 1, characterized in that: said cutter element (49,51; 159, 160) is disposed in the tape printer in an area defined between said cassette housing (90, 136) and said tape outlet (23, 123) of the printer frame (3) in a state that the cassette (35, 135) is loaded on the tape printer.

3. The tape printer according to claim 1 or 2, characterized in that: said cutter element (49,51; 159,160) is slidably mounted on a support member (37, 157) formed in the printer frame (3).

4. The tape printer according to claim 3, characterized in that: said support member (37, 157) is provided with a tape path (55) formed therein, through which said tape portion passes.

5. The tape printer according to claim 1, characterized in that: a cutter lever (351) and a rotary cutter (353) engaged to each other are provided inside of said printer frame (3) such that operation of said cutter lever causes rotation of said rotary cutter (353) and thus urging the tape against the outer surface of a peripheral wall (202) of said tape cassette (201).

6. The tape printer according to one of claims 1 to 5, characterized by: loading the tape cassette (35, 135, 201) in which said tape outlet (99, 146, 253a) is formed at one corner portion of the cassette housing (90, 136, 202).

7. The tape printer according to one of claims 1 to 6, characterized in that: said cutter operating means comprises a cutter lever (45, 351) which is able to be manually operated.

8. The tape printer according to claim 7, characterized in that: said cutter lever (45) extends outside the side frame portion of the printer frame (3)."

Claim 1 of the first auxiliary request is a combination of the features of claims 1 and 2 of the patent in suit as granted.

Claim 1 of the second auxiliary request is a combination of the features of claims 1, 2 and 3 of the patent in suit as granted.

Claim 1 of the third auxiliary request is a combination of the features of claims 1, 2 and 7 of the patent in suit as granted.

Claim 1 of the fourth auxiliary request is a combination of the features of claims 1 and 3 of the patent in suit as granted and the following feature: "said cutter element comprises a cutter (49, 159) at one end thereof and is driven by a cam (41) at the other end thereof."

Claim 1 of the fifth auxiliary request is a combination of the features of claims 1 to 4 of the patent in suit as granted.

Claim 1 of the sixth auxiliary request reads as follows:

"1. Tape printer (1, 130, 200) including a detachably loaded tape cassette (35, 135, 201) for printing an image on a tape (21, 255) located in said tape cassette, said cassette having a housing (90, 136, 202) provided with a tape outlet (99, 146, 253a), including:
a printer frame (3) having a tape outlet (23, 123) in a side frame portion;
printing means (83,75; 142,154; 341,347) in form of a printhead (83) and a platen (75) for printing the image on the tape at a printing position defined in the tape cassette;
feeding means (101,69; 145,155; 227,349) in form of a feed roller assembly (73) for feeding a tape portion printed by said printing means through the tape outlet (23) toward the outside of the cassette housing;
cutter means (49,51; 159,160; 353a,353) in form of a cutter holder (51) having a cutter (49) for cutting the tape portion to separate it from the tape located in the tape cassette, and

cutter operating means (43,45; 351) in form of a cutter lever (45) for causing the cutting operation of said cutter means, characterized in that:
said cutter means includes a cutter element (49,51; 159,160; 353a,353) in form of said cutter (49) which is disposed in the tape printer in an area defined between said tape outlet (99, 146, 253a) of said cassette housing (90, 136, 202) and said tape outlet (23, 123) of the printer frame (3) in a state that the cassette (35, 135, 201) is loaded on the tape printer."

Claim 1 of the seventh auxiliary request reads as follows:

"1. Tape printer (1, 130) with a detachably loaded tape cassette (35, 135) for printing an image on a tape (21, 255) located in said tape cassette, said cassette having a housing (90, 136) provided with a tape outlet (99, 146), including:
a printer frame (3) having a tape outlet (23, 123) in a side frame portion;
printing means (83,75; 142,154; 341,347) in form of a printhead (83) and a platen (75) for printing the image on the tape at a printing position defined in the tape cassette, said printhead and said platen being relatively movable between an inoperative position, at which they are spaced apart, and an operative position, in which they are in contact with each other to perform a printing operation;
feeding means (101,69; 145,155) for feeding a tape portion printed by said printing means through the tape outlet (23, 123) toward the outside of the cassette housing, said feeding means comprising first feed roller means (69, 155) provided on said frame and

second feed roller means (87, 145) provided in the tape cassette;
cutter means (49, 51; 159, 160) in form of a cutter holder (51, 160) having a cutter (49, 159) for cutting the tape portion to separate it from the tape located in the tape cassette, and
cutter operating means (43, 45) in form of a cutter lever (45) for causing the cutting operation of said cutter means, characterized in that:
said cutter means includes a cutter element (49,51; 159,160; 353a,353) in form of said cutter (49, 159) which is disposed in the tape printer in an area defined between said tape outlet (99, 146) of said cassette housing (90, 136) and said tape outlet (23, 123) of the printer frame (3) in a state that the cassette (35, 135) is loaded on the tape printer."

V. In the written procedure and during oral proceedings, the appellant argued essentially as follows:

According to Article 76 EPC, the subject-matter of a divisional application may not extend beyond the content of the earlier application. That requirement was equivalent to the respective requirement of Article 123(2) EPC, and, accordingly, the same criteria for the disclosure test had to be applied.

The findings in decision G 1/93 (OJ EPO 1994, 541), points 9, 11 and 16 of the Reasons, were thus also applicable to the present case. Consequently, the respondent should not be allowed to improve his position by adding subject-matter not disclosed in the parent and grandparent applications as filed. Such added matters might be generalisations of specific

features or embodiments and the introduction of new alternatives. The tests of disclosure had to be carried out precisely and carefully. The interest of the public had to be respected. The public should not be surprised by a claim directed to new subject-matter.

In order to meet the requirements of Article 76 EPC, the subject-matter of the patent in suit according to the respondent's main request had to be disclosed, ie. had to be directly and unambiguously derivable from the content of the parent application as well as from the content of the grandparent application. The patent in suit did not meet that requirement for the following reasons:

(i) Since the printer according to claim 1 of the patent in suit as granted did not include a cassette, an area between the tape outlet of the cassette housing and the tape outlet of the printer frame, to which claim 1 referred to, was not defined. Furthermore, according to the parent and grandparent applications, the cutter element was disposed either above or below the area defined between the tape outlet of the cassette housing and the tape outlet of the printer frame. Thus, even if it were to be assumed that claim 1 of the patent in suit as granted related to the combination of a printer and a cassette, the feature of a cutter element being disposed in an area defined between the tape outlet of the cassette housing and the tape outlet of the printer frame was disclosed neither in the parent application nor in the grandparent application.

(ii) A plurality of features which, in the parent and grandparent applications, had been disclosed as being plainly essential had been omitted from the claims of the patent in suit according to the respondent's main request. This concerned, among others, the cassette, which comprised three accommodation sections, and the printing means, which were disclosed as printing means being movable between an operative and an inoperative position and comprising a platen and a printhead for printing on the reverse side of the tape.

(iii) The parent and the grandparent applications both disclosed specific printing means, specific feeding means, specific cutting means and specific cutter operating means. There was no disclosure of any other embodiments and there was no basis for a generalisation of these means. Due to that generalisation, the subject-matter of the claims of the patent in suit according to the respondent's main request now encompasses printing, feeding, cutting and cutter operating means disclosed neither in the parent application nor in the grandparent application.

(iv) Claim 1 of the patent in suit according to the respondent's main request was directed to a combination of features which, in that constellation, was directly and unambiguously derivable from neither the parent application nor the grandparent application. What the respondent had done was to "cherry pick" certain features from the original embodiments to arrive at an arbitrary combination of features.

The same arguments applied to the subject-matter of the respondent's auxiliary requests. In particular, as regards the single claim of the seventh auxiliary request, there was no disclosure, neither in the parent application nor in the grandparent application, of a tape printer comprising a tape cassette wherein the tape cassette did not comprise an ink source tape. There was no hint at a printing head comprising its own ink reservoir.

The subject-matter of the claims of the main request as well as of the auxiliary requests 1 to 7 thus extended beyond the content of the parent and the grandparent applications. Therefore, the patent had to be revoked on the basis of Article 100(c) EPC.

VI. In the written procedure and during oral proceedings, the respondent argued essentially as follows:

According to Article 76 EPC, a divisional application may be filed only in respect of subject-matter which did not extend beyond the content of the earlier application. However, the content of the earlier application included the claims as well as the description and the drawings. In particular, Article 76 EPC allowed claims based on subject-matter disclosed only in the drawings of the earlier application as filed.

There was a basis in the description and the drawings of the parent and the grandparent applications, for the combination of features forming the subject-matter of the claims of the patent in suit. In particular, the

paragraphs following column 6, line 6 of the grandparent application and the respective paragraphs in the parent application described the cutting means and thus formed a basis for the subject-matter of the claims of the patent in suit and the invention claimed therein.

The parent and the grandparent applications disclosed different types of tape cassettes and indicated that "... the invention is also applicable to an ink ribbon cassette, which accommodates a sole ink ribbon", cf. column 16, lines 3 to 5 of the grandparent application and column 15, lines 16 to 18 of the parent application. There was no working relationship between the cutting means and the structure of the tape cassette, thus, according to the findings in decision T 514/88 (OJ EPO 1992, 570), point 2.5 of the Reasons, it was allowed to direct the claim to a printer including cutting means without specifying the structure of the tape cassette.

The passages in column 2, lines 41 to 44 of the parent application and in column 3, lines 30 to 33 of the grandparent application clearly showed that the description of the embodiments contained advantages and objects other than those initially described in the introductory portion of these applications.

This applied to the subject-matter of the main and the auxiliary requests.

As regards the seventh auxiliary request, the single claim specified the printing means, the feeding means

and the cutting means. Thus, there was no broadening of the scope of the claim by generalisation.

The subject-matter of the claims according to the main request and the auxiliary requests therefore met the requirements of Article 76 EPC.

Reasons for the Decision

1. *Preliminary considerations*

1.1 The European patent application on which the patent in suit is based was filed as a European divisional application of the parent application, which in turn had been filed as a European divisional application of the grandparent application (cf. 'Summary of Facts and Submissions', point II above).

1.2 Pursuant to Rule 25(1) EPC, the earlier application must still be pending when a European divisional application is filed. On the other hand, Article 76 EPC does not exclude that the earlier application is itself a European divisional application. Hence, in the Board's judgement, a European divisional application of a pending European patent application which itself was filed as a European divisional application of a then pending European patent application does not as such contravene the requirements of Article 76 EPC and Rule 25 EPC.

1.3 Since the European divisional application on which the patent in suit is based relates to the parent application, the latter is the "earlier application"

within the meaning of Article 76 EPC and Rule 25 EPC. The parent application was still pending when the divisional application was filed.

1.4 Article 123(2) EPC provides that, after a European patent application has been filed, any amendments giving rise to subject-matter extending beyond the content of the application as filed shall not be allowed. The underlying idea is that, in the interest of the public, an applicant or patent proprietor shall not be allowed to improve his position by adding subject-matter not disclosed in the application as filed (cf. decision G 1/93; OJ EPO 1994, 541; point 9 of the Reasons).

According to Article 76(1) EPC, a European divisional application "may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed". Hence, the general principle embodied in Article 123(2) EPC explicitly applies *mutatis mutandis* to a European divisional application relative to an earlier application as filed.

1.5 Given the fact that, in the present case, the earlier application, i.e. the parent application, is a European divisional application of the grandparent application and that, consequently, both the European divisional application on which the patent in suit is based and the parent application are deemed to have been filed on the date of filing of the grandparent application under Article 76(1) EPC, not only the patent in suit, but also the parent application must comply with Article 76(1) EPC. This finding is in keeping with the

general principle referred to under point 1.4 above. Accordingly, the parent application may not contain subject-matter which extends beyond the content of the grandparent application (i.e. the earlier application in respect of the parent application) as filed.

Consequently, in order to comply with the requirements of Article 76(1) EPC, subject-matter contained in the patent in suit must be disclosed in both the parent application as filed and the grandparent application as filed.

1.6 It follows that if the patent in suit contains subject-matter which extends beyond the content of the parent application as filed and/or the grandparent application as filed, the patent in suit shall be revoked (cf. Articles 100(c), second alternative, and 102(1) EPC, in conjunction with Rule 66(1) EPC). Since non-compliance with Article 76(1) EPC constitutes a ground for revocation of a European patent under Articles 100(c) EPC and 102(1) EPC, it further follows that, if such an extension exists, the EPC does not appear to provide for the possibility of determining any effective filing date the patent in suit may benefit from, and of assessing novelty and inventive step in respect of the prior art published before that date (deviating findings: cf. decision T 904/97 of 21 October 1999, point 4 of the Reasons).

2. *Content of the parent application as filed*

2.1 According to the introductory part of the description, cf. column 1, lines 1 to 19, and claims 1 and 4 of the published version of the parent application as filed,

the invention of the parent application relates to a tape cassette housing for a tape cassette. The object of the invention is to provide a tape cassette housing, which is richly versatile and permits production of a label tape cassette or a lettering tape cassette, simple in construction and operation and inexpensive, and also a tape printer for use with such a tape cassette. That object is solved by a tape cassette housing according to claim 1, ie. by a cassette housing comprising first and second accommodation sections for accommodating an image source tape and an image receiving tape, respectively, and a third accommodation section for accommodating an adhesive tape.

The parent application is thus directed to a tape cassette housing and a printer for use with such a housing, wherein an essential feature consists in that the tape cassette housing comprises the above-mentioned accommodation sections.

2.2 In the following part, cf. column 1, line 20 to column 2, line 40 of the published version of the parent application as filed, preferred structures of the tape cassette and the printer, and their advantages are described. These preferred structures concern the protection of the printed surface by an adhesive tape, the feed roller means, the arrangement and purpose of the accommodation sections, and the adoption of the printer to produce tapes in a mirror image transfer mode.

This part of the parent application as filed does not refer to any cutting means.

2.3 Finally, in the parent application as filed, cf. column 2, lines 41 to 44 of the published version, it is mentioned that the "above and other objects, features and advantages of the" present "invention will be more completely apparent from the following description with reference to the accompanying drawings."

In the course of the description of a first, a second and a third embodiments of the invention, cutting means are described in connection with a specific structure of the tape cassette, specific printing means, specific feeding means, and specific cutter operating means, cf. column 5, lines 20 to 41; column 13, lines 52 to 57; and column 19, lines 24 to 31 of the published version of the parent application as filed. The location of the cutter element is shown in the drawings, cf. Figures 4, 5, 12 and 17. According to the first and second embodiments (cf. Figures 4, 5 and 12), a slidably mounted cutter element 49, 159 is located near the outlet 99, 146 of the tape cassette.

As regards the third embodiment, a printer frame having a tape outlet in a side frame portion is not disclosed. In Figure 17, the outline of the printer is only schematically shown. It is not directly and unambiguously derivable whether the tape cassette is mounted inside the printer or on top of it. The latter makes the provision of an outlet in a side frame of the printer unnecessary.

3. *Subject-matter of claim 1 of the patent in suit as granted (main request)*

3.1 Claim 1 is directed to a tape printer including a printer frame having a tape outlet in a side frame portion, feeding means, cutter means and cutter operating means. The characterising portion of claim 1 defines the cutter means as including a cutter element which is disposed in the tape printer in an area defined between a tape outlet of a cassette housing and a tape outlet of the printer frame. The printer is suitable for printing an image on a tape located in a tape cassette.

3.2 Accordingly, there is a shift of the subject-matter for which protection is sought away from a tape cassette housing having a plurality of accommodation sections and a printer for use with such a cassette (parent application) towards a printer which does not necessarily include a tape cassette and which might be used with a tape cassette not necessarily having a plurality of accommodation sections (patent in suit).

In the Board's view, there is no indication in the parent application as filed that a further invention is disclosed which focuses on a printer including a cutter element disposed at a specific location. In particular, there is no indication that the tape cassette housing and its structure were not essential but that the location of the cutting element would be of particular significance or may have any particular advantages.

The parent application as filed, cf. column 15, lines 16 to 18 of the published version, refers to the fact that "the invention is also applicable to an ink ribbon cassette, which accommodates a sole ink ribbon". This statement concerns the issue of what is

accommodated in the cassette. It thus does not constitute a disclosure of a tape cassette having a sole accommodation section. This would be contrary to the invention disclosed in the parent application which aims at a richly versatile tape cassette achieved by providing a plurality of accommodation sections, cf. in particular, column 2, lines 23 to 33 of the published version of the parent application as filed. Accordingly, the same cassette housing may be used for different purposes, wherein, depending on the intended use, certain accommodation sections accommodate various tapes while nothing is accommodated in the remaining section, cf. column 2, lines 23 to 29 and column 20, lines 30 to 44 of the published version of the parent application as filed.

Consequently, the concept for which protection is sought in claim 1 of the patent in suit as granted is not directly and unambiguously derivable from the content of the parent application as filed.

3.3 Furthermore, a printer having a tape outlet in a side frame portion of the printer frame is shown in Figures 4 and 5 (first embodiment), and in Figure 12 (second embodiment) of the published version of the parent application as filed. However, in both embodiments, the cutter element is disposed near the tape outlet of the cassette and below the transport path of the tape along which the tape is transported between the tape outlet of the cassette and the tape outlet of the printer. Accordingly, there is no disclosure of a cutter element being disposed in an area defined between a tape outlet of a cassette housing and a tape outlet in a side frame portion.

Moreover, there is no disclosure of the generalisation included in claim 1 that the cutter element might be disposed anywhere between the two outlets rather than near the tape outlet of the cassette.

Consequently, even if claim 1 of the patent in suit as granted is construed as meaning that a printer including a tape cassette is concerned, a printer comprising a cutting element which is disposed in the tape printer in an area as defined in claim 1 would not, directly and unambiguously, be derivable from the disclosure of the parent application as filed.

3.4 Further generalisations included in claim 1 of the patent in suit as granted concern the printing means, the feeding means and cutter operating means. However, there is also no basis for any of these generalisations. Only specific printing, feeding and cutter operating means are disclosed in the parent application as filed.

Moreover, claim 1 of the patent in suit as granted represents a selection of elements of a tape printer wherein some of these elements are described in more detail (cutter means) and others in a more general form (tape cassette, printing means, feeding means). There is no basis for such a selection and such a combination of these elements as a whole in the parent application as filed.

3.5 To sum up, neither the concept as such of a printer including cutter means and a cutter element in a specific location, nor specific features of claim 1 of the patent in suit as granted, nor the specific combination of features of that claim are directly and

unambiguously derivable from the parent application as filed.

Therefore, the subject-matter of claim 1 of the patent in suit as granted extends beyond the content of the parent application as filed and, hence, does not meet the requirements of Article 76 EPC. The main request of the respondent is therefore not allowable.

4. *Auxiliary requests*

The same arguments apply to the subject-matter of claim 1 of each of the auxiliary requests.

In particular, claim 1 of the first to fifth auxiliary requests only comprises additional features describing the cutting means in more detail.

Although the single claims of the sixth and seventh auxiliary requests are explicitly directed to a printer including a tape cassette, neither the structure of the tape cassette nor all the specific features of the printing, feeding and cutter operating means, which, in the parent application as filed, are disclosed in combination with the cutting means, are subject-matter of these claims. The single claim of the seventh auxiliary request comprises several specific features of the feeding means and the printing means disclosed in the parent application as filed. However, that claim is silent about the structure of the tape cassette and, thus, encompasses also printers including tape cassettes which do not comprise an accommodation section for an ink source tape. The subject-matter of claim 1 of the seventh auxiliary request thus also

concerns a selection of features, which, as a whole, is not disclosed in the parent application as filed.

The amendments made in the auxiliary requests are thus not suitable for remedying any of the deficiencies referred to above with respect to the requirements of Article 76 EPC. Consequently, none of the auxiliary requests of the respondent is allowable.

5. Although each of the above-mentioned deficiencies by itself already prejudices the maintenance of the patent in suit in accordance with any of the requests of the respondent, the Board, for the sake of completeness and with regard to the discussion which took place during the oral proceedings, considered it appropriate to express its view also with regard to the other objections raised with respect to the requirements of Article 76 EPC as far as the accomplishment of these requirements with regard to content of the parent application as filed is concerned.

6. Since the subject-matter of claim 1 of the main request as well as of claim 1 of each the auxiliary requests of the respondent extends beyond the content of the parent application as filed, it had not to be considered whether or not the subject-matter of these claims extends beyond the content of the grandparent application as filed.

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:

M. Dainese W. Moser