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**D E C I S I O N**  
**of 18 November 2003**

**Case Number:** T 0270/02 - 3.2.5

**Application Number:** 97101551.6

**Publication Number:** 0787598

**IPC:** B41N 3/04

**Language of the proceedings:** EN

**Title of invention:**

Process for manufacturing lithographic printing plate support

**Applicant:**

FUJI PHOTO FILM CO., LTD.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 83

**Keyword:**

"Sufficiency of disclosure (no)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0270/02 - 3.2.5

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.5  
of 18 November 2003

**Appellant:** FUJI PHOTO FILM CO., LTD.  
210 Nakanuma  
Minami-Ashigara-shi  
Kanagawa-ken (JP)

**Representative:** Grünecker, Kinkeldey,  
Stockmair & Schwanhäusser  
Anwaltssozietät  
Maximilianstrasse 58  
D-80538 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 16 October 2001  
refusing European application No. 97101551.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** W. Moser  
**Members:** P. E. Michel  
H. M. Schram

## Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal against the decision of the Examination Division refusing European patent application No. 97 101 551.6.

The Examination Division held that the amendments incorporated in a main request did not comply with the requirements of Article 123(2) EPC and that an auxiliary request did not comply with the requirements of Articles 83 and 84 EPC. The Examination Division also held that the independent claims of both requests lacked novelty.

II. The appellant requested that the decision of the Examination Division be set aside and that a patent be granted on the basis of the following documents filed on 22 February 2002:

(i) claims 1 to 7 as main request; or

(ii) claims 1 to 7 as auxiliary request.

III. In a summons dated 25 August 2003, oral proceedings were appointed. In a communication pursuant to Article 11(1) of the Rules of Procedure of the Boards of Appeal annexed to the summons, objections were in particular raised in connection with the requirements of Article 83 EPC with respect to both the main and auxiliary requests of the appellant.

IV. On 31 October 2003, the representative of the appellant informed the Board that he would not attend the oral proceedings. Oral proceedings therefore took place on

18 November 2003 in the absence of the representative of the appellant in accordance with Rule 71(2) EPC.

V. The following document is referred to in the present decision:

D5: JIS K6200, together with an English translation of a part thereof

VI. Claim 1 of the main request of the appellant reads as follows:

"1. A process for manufacturing a lithographic printing plate support made of aluminum or an aluminum alloy, in which the surface of the support is mechanically roughened by graining it with a brush comprising bristles which have a bending elastic modulus of 980 to 3920 MPa (10,000 to 40,000 kg/cm<sup>2</sup>) and a nerve of 4.905 N (500 g) or less per bristle."

Claim 1 of the auxiliary request corresponds to claim 1 of the main request, with the addition of the feature:

"the nerve of a bristle being defined as the maximum value of the force imposed on a load cell equipped with a slip resistance by moving the bristle at a rate of 5 mm/sec."

VII. In connection with the issue of whether or not the requirements of Article 83 EPC are satisfied, the appellant has argued substantially as follows:

The application discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, so that the requirements of Article 83 EPC are satisfied.

Document D5 provides a definition of the term "nerve". It is further submitted that the term "nerve" should be understood as referring to the buckling load of the bristle. Furthermore, a method of determining the nerve is disclosed at page 4, lines 10 to 13 of the application as filed (page 2, lines 53 to 55 of the published version of the application as filed). Appropriate materials for the bristles of the brush are disclosed in the last paragraph on page 4 of the application as filed (the paragraph common to pages 2 and 3 of the published version of the application as filed).

## **Reasons for the Decision**

### *1. Main Request*

- 1.1 The term "nerve", used in claim 1 to refer to a property of a bristle of a brush, does not appear to be a generally accepted term in the art, and the Board is not aware of any document other than that supplied by the appellant which shows what the person skilled in the art would understand by this term. Document D5 consists of a copy of JIS K 6200 in the Japanese language and a translation of a part of this document in which a Japanese term has been translated by the term "nerve". The translation of the definition of the term "nerve" refers to "an elastic resistance against

deformation of a raw material rubber or an unvulcanized rubber (the nerve influences a gage of calendar sheet, a measurement of extrudate and/or surface property)". It is not clear, however, how this definition is to be applied to a bristle, and in particular a bristle which is not necessarily formed of a rubber.

1.2 The skilled reader of the application is accordingly reliant on the information given in the application for an understanding of this term. According to page 2, lines 50 to 56 of the application as filed (published version), the term refers to the stiffness of a bristle, represented by a bending elastic modulus and is defined as "a maximum value of the force imposed on a load cell equipped with a slip resistance by moving the bristle at a rate of 5 mm/sec." This information is not, however, sufficient to allow the skilled reader to determine the value of the "nerve" in the absence of further details specifying how the test is to be carried out. The listing of a number of suitable materials is also not sufficient, since, as stated at page 3, lines 1 and 2 of the published version of the application as filed, "it is necessary for them to satisfy the values of the physical properties regulated above".

1.3 According to statement setting out the grounds of appeal of the appellant, the term should be understood as referring to the buckling load of the bristle (cf. page 3). The disclosure of the application as filed does not, however, lead the skilled reader to this conclusion, since the word "buckling" (implying an axial loading) nowhere appears, the term "bending" being used.

1.4 The application as filed thus does not provide sufficient information to enable the person skilled in the art to select bristles falling within the terms of claim 1, so that the requirements of Article 83 EPC are not satisfied.

2. *Auxiliary Request*

2.1 Claim 1 of the auxiliary request incorporates the definition of the term "nerve" referred to at paragraph 1.2 above. However, in view of the points noted above in connection with the main request, this amendment does not overcome the objections under Article 83 EPC.

2.2 The reasons for considering that the requirements of Article 83 EPC are not satisfied in respect of the main request thus also apply to the auxiliary request.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

R. Schumacher

W. Moser