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D E C I S I O N
of 8 June 2005

Case Number: T 0465/04 - 3.2.5

Application Number: 94101083.7

Publication Number: 0605388

IPC: B41J 2/255

Language of the proceedings: EN

Title of invention:
Ink tank

Patentee:
SEIKO EPSON CORPORATION

Opponent:
Pelikan Hardcopy (International) AG

Headword:
-

Relevant legal provisions:
EPC Art. 114, 56

Keyword:
"Admission of new ground of opposition (no)"
"Inventive step (yes)"

Decisions cited:
G 0010/91, T 0986/93

Catchword:
-



Case Number: T 0465/04 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 8 June 2005

Appellant: Pelikan Hardcopy (International) AG
(Opponent) Gewerbestrasse 9
CH-8132 Egg (CH)

Representative: Fährdrich, Martin
Lovells
Kennedydamm 17
D-40476 Düsseldorf (DE)

Respondent: SEIKO EPSON CORPORATION
(Proprietor of the patent) 4-1, Nishishinjuku 2-chome
Shinjuku-ku
Tokyo (JP)

Representative: Hoffman Eitle,
Patent- und Rechtsanwälte
Arabellastrasse 4
D-81925 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 15 January 2004
rejecting the opposition filed against European
patent No. 0605388 pursuant to Article 102(2)
EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition filed against European Patent No. 0 605 388.

The Opposition Division held that the subject-matter of claim 1 as granted involved an inventive step. In the decision, the Opposition Division indicated that the belatedly invoked ground of opposition under Article 100(c) EPC was not admitted, being *prima facie* not relevant.

- II. Oral proceedings were held before the Board of Appeal on 8 June 2005.

- III. The appellant requested that the decision under appeal be set aside and that the European Patent No. 0 605 388 be revoked.

The respondent (patentee) requested that the appeal be dismissed.

- IV. The following documents are referred to in the present decision:

D1: DE-A-3 207 074

D2: US-A-3 967 286

D4: VDI-Berichte Nr. 341, 1979, pages 5 to 9, "Moderne Druckverfahren für Schreibstationen", Heinzl

D7: photographs of an ink tank for a PT80 printer

D8: Gutachten, Prof. Dr.-Ing. Wolfgang Wehl

D9: DE-A-3 039 165.

V. Claim 1 as granted reads as follows:

"1. An ink tank for supplying a proper amount of ink needed to a dot matrix printer head, said ink tank (2) having a lid, a rectangular bottom wall and walls extending between them and an ink supply port (41) for delivering ink, and containing ink absorbing means which comprises at least one porous member (60",61,62), the pores of which are progressively reduced in size in a direction towards the ink supply port (41), wherein said ink supply port (41) is located in the bottom wall (40a), close to one narrow side of said rectangular bottom wall (40a), and a plurality of slots (45a,45b,45c) communicating with the ink supply port are provided in the interior of the bottom wall."

VI. The appellant has argued substantially as follows in the written and oral proceedings:

The Opposition Division incorrectly exercised their discretion under Article 114(2) EPC in not admitting the ground of opposition under Article 100(c) EPC into the proceedings. This ground should accordingly be admitted into the present proceedings.

The feature of the supply port being located in the bottom wall of the ink tank, close to one narrow side of the rectangular bottom wall is only disclosed in the application as filed in connection with the supply port being in a corner of the bottom wall. There is no indication in the application as filed that the feature of being close to one narrow side of the bottom wall is essential, whilst the feature of being close to the long side of the bottom wall is not essential.

The Board should in any case exercise its discretion and consider the question of whether or not the patent in suit complies with the requirements of Articles 76(1) and 123(2) EPC. These matters are easy to examine, since all the necessary documents are in the file. There is no question of the late introduction of the ground being for tactical reasons. Since the objections were discussed during the examination procedure, the respondent is prepared. It is further not in the public interest to have an invalid monopoly.

The subject-matter of claim 1 does not involve an inventive step.

The closest prior art is represented by document D1. The features which distinguish the subject-matter of claim 1 over the disclosure of this document, that is, the provision of a rectangular bottom wall, the position of the ink supply port, and the provisions of slots in the bottom wall, are merely a collection of banal features which do not solve a technical problem and do not give rise to any advantages.

Ink tanks with a rectangular bottom wall, lid and side walls are well known, for example, from document D9. The choice of a particular shape for the ink tank is a routine matter not requiring an inventive step. The shape is determined by the printer with which the ink tank is to be used and which is not part of the claimed subject-matter.

The choice of a position for the ink supply port is similarly a routine matter for the person skilled in the art.

The provision of slots in the bottom wall in order to increase the degree of emptying of the tank is suggested by documents D4 and D7.

A similar conclusion is reached if document D2 is considered to be the closest prior art.

VII. The respondent has argued substantially as follows in the written and oral proceedings:

During the examination procedure, the examiner objected that the term "front" as used in claim 2 of the application as filed was not clear. The claim was accordingly amended by replacing the term "front" by "narrow side", thereby arriving at the wording found in claim 1 as granted. That this is the intended meaning of the term is clear from column 7, lines 21 to 24 of the description and Figures 1 to 3 of the drawings of the application as filed (printed version).

The Opposition Division was thus justified in coming to the *prima facie* conclusion that the application as filed discloses that the supply port is located in the bottom wall of the ink tank, close to one narrow side of the rectangular bottom wall. It follows that the Opposition Division correctly exercised its discretion in this matter.

As regards the question of inventive step, starting from document D1 as the closest prior art, there is

nothing in the prior art to induce the person skilled in the art to modify the ink tank by the provision of a plurality of slots in the interior of the bottom wall communicating with the ink supply port. There is in particular no reason to combine the teaching of document D7 with that of document D1.

The same arguments apply if the closest prior art is considered to be represented by document D2.

The subject-matter of claim 1 thus involves an inventive step.

Reasons for the Decision

1. *Admission of the Ground of Opposition under Article 100(c) EPC*
- 1.1 During the proceedings before the Opposition Division, the appellant requested that a ground of opposition under Article 100(c) EPC, which was not raised during the period specified in Article 99 EPC, should be admitted into the proceedings. In particular, it was argued that the feature of claim 1 according to which the "ink supply port (41) is located in the bottom wall (40a), close to one narrow side of said rectangular bottom wall (40a)" was not disclosed in the application as filed. It was, however, decided by the Opposition Division that the ground of opposition under Article 100(c) EPC was not submitted in due time and was not *prima facie* relevant. The ground was accordingly disregarded by the Opposition Division.

- 1.2 Claim 2 of the application as filed specifies that "said ink supply port (41) is located in the front of the bottom wall". Whilst the term "in the front of", considered in isolation from the remainder of the document, is not entirely clear, reference to the drawings as filed and, in particular, Figure 3, makes it clear that the term "in the front of the bottom wall" should be understood as meaning "close to one narrow side of said rectangular bottom wall".
- 1.3 The Opposition Division was thus justified in coming to the *prima facie* conclusion that the application as filed discloses the feature of claim 1 whereby the supply port is located in the bottom wall of the ink tank, close to one narrow side of the rectangular bottom wall.
- 1.4 The Board accordingly comes to the conclusion that the Opposition Division correctly exercised its discretion in refusing to admit the ground of opposition under Article 100(c) EPC. The fact that the ground of opposition was disregarded by the Opposition Division therefore does not constitute an abuse of procedure.
- It follows that, in accordance with the decision of the Enlarged Board of Appeal G 10/91, the ground of opposition under Article 100(c) EPC could only be considered with the approval of the respondent. Since the respondent has not given such approval, the ground of opposition under Article 100(c) EPC is not admitted into the present proceedings.
- 1.5 It was argued on behalf of the appellant, referring to the decision T 986/93, that the Board should

nevertheless exercise its discretion and admit the ground of opposition under Article 100(c) EPC in conjunction with both Articles 76(1) and 123(2) EPC.

In decision T 986/93, it was held that, if the Board is of the opinion that the Opposition Division exercised its discretion wrongly, the Board is not barred from considering a belatedly submitted ground of opposition. In the present case, however, as set out above, the Board is of the opinion that the Opposition Division correctly exercised its discretion in refusing to admit the ground of opposition under Article 100(c) EPC.

Whilst it may be the case that the respondent would have been able to respond to the introduction of this fresh ground of opposition at the appeal stage, owing to the matter having been discussed during the examination procedure, it is equally the case that nothing prevented the objections under Articles 76(1) and 123(2) EPC being introduced with the notice of opposition.

It is therefore, in view of the decision G 10/91, not appropriate for the Board to go beyond a review of whether or not the exercise of discretion by the Opposition Division under Article 114 EPC constitutes an abuse of procedure.

2. *Inventive step*

- 2.1 The closest prior art may be regarded as being represented by document D1, and, in particular, the alternative construction disclosed at page 9, line 26 to page 10, line 3 and also mentioned at page 6,

lines 1 to 3 (the page numbering being that as written by hand). In this alternative construction, the capillary system consisting of rods or tubes as shown in Figure 1 is replaced by a fibrous material, such as fibreglass, the packing density of which is increased in the vicinity of the outlet nozzle. The subject-matter of claim 1 differs from this disclosure in that the ink tank has a rectangular bottom wall, the supply port is located close to one narrow side of the rectangular bottom wall, and a plurality of slots communicating with the ink supply port are provided in the interior of the bottom wall.

- 2.2 The provision of the slots in the bottom wall communicating with the ink supply port can be seen as contributing to the object of the invention as set out in the patent in suit at paragraphs [0003] and [0021], that is, to achieve a stable ink supply which is less subject to environmental variations.
- 2.3 Document D7 has been cited in the present proceedings as showing slots in the bottom wall of an ink tank. As discussed in the expert's opinion constituting document D8, the photographs constituting document D7 are of an ink tank forming part of a printing head referred to as a PT-80, as shown in Figure 2 of document D8, and which is also mentioned in document D4 (see Figure 5).

As shown in the photographs constituting document D7, a plurality of slots or grooves are provided in the interior of the bottom wall of the ink tank, which communicate with a well surrounding the ink supply port. As appears from document D8, page 4, lines 13 and 14, a flexible foil overlies the ink in the ink tank, which

collapses as the tank is emptied and ends up in contact with the bottom of the tank. The purpose of the grooves is thus to enable the ink tank to be emptied in spite of the foil being in contact with the bottom wall of the tank.

This is not, however, the function of the slots specified in claim 1 of the patent in suit, which are provided in the bottom wall of a tank containing a porous member, and whose function is to conduct ink from the porous member to the supply port. Thus, the presence of slots in the ink tank of document D7 would not encourage the person skilled in the art to provide similar slots in the bottom wall of the tank of document D1.

Thus, leaving aside the question of whether or not the ink tank of document D7 was made available to the public before the priority date of the patent in suit, the disclosure of this document would not indicate to the person skilled in the art that the ink tank known from document D1 should be modified by the provision of a plurality of slots communicating with the ink supply port in the interior of the bottom wall of the ink tank.

- 2.4 A similar conclusion is reached if document D2 is considered to be the closest prior art. Leaving aside the additional distinguishing feature of the provision of a porous member whose pores are progressively reduced in size in a direction towards the ink supply port, there is similarly no inducement for the person skilled in the art to provide a plurality of slots communicating with the ink supply port in the interior of the bottom wall of the ink tank.

2.5 The subject-matter of claim 1 thus involves an inventive step. Claims 2 to 4 are directly or indirectly appendant to claim 1 and relate to preferred embodiments of the ink tank of claim 1. The subject-matter of these claims thus also involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Dainese

W. Moser