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**Datasheet for the decision
of 5 February 2009**

Case Number: T 0390/05 - 3.5.04

Application Number: 92200415.5

Publication Number: 0500174

IPC: H04N 1/40

Language of the proceedings: EN

Title of invention:

Image processing method and scan/print system for performing
the method

Patentee:

Océ-Technologies B.V.

Opponent:

Canon Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)
RPBA Art. 15(3),(5),(6)

Relevant legal provisions (EPC 1973):

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Keyword:

"Amendments - added subject-matter (yes)"

Decisions cited:

-

Catchword:

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Case Number: T 0390/05 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 5 February 2009

Appellant: Océ-Technologies B.V.
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Representative: Hanneman, Henri W.A.M.
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Respondent: Canon Inc.
(Opponent) No. 30-2, Shimomaruko 3-chome
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Representative: TBK-Patent
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 31 January 2005
revoking European patent No. 0500174 pursuant
to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: F. Edlinger
Members: A. Teale
T. Karamanli

Summary of Facts and Submissions

- I. This is an appeal against the decision by the opposition division revoking European patent No. 0 500 174.

- II. The decision under appeal was based on the ground that the subject-matter of independent claims 1 and 8 according to the sole request submitted during the oral proceedings before the opposition division on 27 October 2004 lacked inventive step. Objections against the amendments to claim 1 were also considered under Article 84 EPC 1973 and Article 123(2) EPC, but the opposition division found that the requirements of the EPC were met in this respect.

- III. A notice of appeal was received from the appellant (proprietor). With a subsequently filed statement of grounds of appeal the appellant submitted complete claim sets according to a main request and an auxiliary request and requested that the decision under appeal be set aside and that the patent be maintained in the amended form as submitted during the oral proceedings before the opposition division (main request) and, in the alternative, that the patent be maintained in the amended form as submitted with the statement of grounds of appeal (auxiliary request). The appellant moreover requested deferral of any amendments to the specification until more clarity as to the patentability of the amended claims had been reached. The appellant also provided arguments as to why the claimed subject-matter involved an inventive step. In particular, the appellant considered that the opposition division's finding that there was no

teaching in claim 1 that the averaging operation could include the pixel of interest was in error.

IV. Claim 1 according to the main request reads as follows:

"A method of processing a series of image signals obtained by photoelectrically scanning a document, each image signal being representative for the optical density of an image dot, the method comprising

- generating a selection signal in response to the image signals, the value of the selection signal being dependent upon differences between the optical densities of neighbouring image dots,
- at least two mutually different image processing operations on a series of image signals, each image processing operation being an image filtering operation yielding a group of processed image signals, and
- selecting, in response to the selection signal, processed image signals from one of the groups of processed image signals,
- subjecting the processed filtered image signals to one and the same conversion operation for converting multi-value image signals into binary raster signals suitable for printing by a printing device where a multi value image signal has a value out of more than two available values and a binary raster signal has a value out of two available values,

characterised in that

at least one of said image processing operations comprises successively an averaging operation and an edge sharpness enhancing operation, and

the step of selecting processed image signals is performed individually for each image dot and is based

on image signals from surrounding image dots, together subjected to at least a local averaging operation."

Claim 1 according to the auxiliary request reads as follows:

"A method of processing a series of image signals obtained by photoelectrically scanning a document, each image signal being representative for the optical density of an image dot, the method comprising

- generating a selection signal in response to the image signals, the value of the selection signal being dependent on local differences in the optical densities of image dots,
- at least two mutually different image processing operations on a series of image signals, each image processing operation being an image filtering operation yielding a group of processed image signals, and
- selecting, in response to the selection signal, processed image signals from one of the groups of processed image signals,
- subjecting the processed filtered image signals to one and the same conversion operation for converting multi-value image signals into binary raster signals suitable for printing by a printing device where a multi value image signal has a value out of more than two available values and a binary raster signal has a value out of two available values,

characterised in that

at least one of said image processing operations comprises successively an averaging operation and an edge sharpness enhancing operation, and

the step of selecting processed image signals is performed individually for each image dot, the

selection signal for each respective image dot being generated in dependence on a difference between pre-averaged optical densities of said respective image dot and of neighbouring image dots."

V. The respondent (opponent) filed a response, arguing *inter alia* that the subject-matter of the main and auxiliary requests lacked inventive step.

VI. The board issued a summons to oral proceedings, setting out in an annex its preliminary opinion on the appeal. Regarding the main request, the board stated *inter alia* that

"There seems to be no basis in the application as originally filed for the expression in claim 1 "local averaging operation", which seems to include not only neighbouring pixels [...] but also the pixel of interest, Article 123(2) EPC."

As to the auxiliary request, the board stated *inter alia* that

"There appears to be no basis in the application as originally filed, Article 123(2) EPC, for the statements in claims 1 and 8 that averaging in the selection step/means not only includes the "neighbouring image dots" but also the "respective image dot" [...]. The averaging operation seems to be disclosed as forming an average of a number of neighbouring image signals only (equations [1] and [2]; the dependency on a difference between averaged optical densities seems to refer to the disclosure in the context of equations [3] to [6])."

- VII. A further submission dated 29 December 2008 was received from the respondent, arguing essentially that the claimed subject-matter according to the main and auxiliary requests lacked original disclosure and did not involve an inventive step.
- VIII. In a letter dated 7 January 2009 the appellant stated that "Applicant/Appellant herewith informs the Board that he will not appear at the oral proceedings. The Board is requested to reach a decision without further comments from our side. We apologize for any consequent inconveniences." The letter did not contain any comments on the substance of the case.
- IX. Oral proceedings before the board were held on 5 February 2009 in the absence of the appellant. The respondent requested that the appeal be dismissed.

The respondent's arguments concerning the allowability of the amendments may be summarized as follows. He agreed with the board's preliminary opinion that several aspects of claims 1 and 8 according to the appellant's main and auxiliary requests did not comply with Article 123(2) EPC. In particular, he could see no basis in the application as originally filed for the current pixel of interest being involved in the local averaging operation. Furthermore he objected to the expressions in claim 1 according to the auxiliary request "dependent on local differences in the optical densities of image dots" and "pre-averaged". The latter expression was not used in the application as originally filed and encompassed many embodiments which were not originally disclosed.

- X. At the end of the oral proceedings the board announced its decision.

Reasons for the Decision

1. *Admissibility*

The appeal is admissible.

2. *Effect of the appellant's absence at the oral proceedings*

The duly summoned appellant did not attend oral proceedings. In accordance with Article 15(3) RPBA (Rules of Procedure of the Boards of Appeal of the European Patent Office, OJ EPO 2007, 536), the board relied for its decision only on the appellant's written substantive submissions (as set out in the statement of grounds of appeal). The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15(5) and (6) RPBA), and the voluntary absence of the appellant was not a reason for delaying a decision (Article 15(3) RPBA).

3. *The amendments*

Compared to claim 1 as originally filed and as granted, claim 1 according to the main request has been amended *inter alia* by adding the expression "local averaging operation." Claim 1 according to the auxiliary request has been amended, compared to claim 1 as originally

filed and as granted, *inter alia* by adding the expression "respective image dot." The question thus arises for both requests whether the claims satisfy Article 123(2) EPC regarding added subject-matter. In the annex to the summons to oral proceedings the board set out its preliminary opinion (see point VI above) that *inter alia* the amendments to claim 1 of the main and auxiliary requests did not satisfy Article 123(2) EPC. The appellant has not presented any counter-arguments, and the board sees no reason to deviate from its preliminary opinion.

The board consequently finds that the amendments to claim 1 of the main and auxiliary requests do not satisfy Article 123(2) EPC.

4. *Conclusion*

Since neither the appellant's main nor auxiliary request is allowable, there is no reason to consider the appellant's request concerning deferral of any amendments to the specification. Accordingly the appeal must be dismissed, as requested by the respondent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

L. Fernández-Gómez

F. Edlinger