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**Datasheet for the decision
of 13 August 2009**

Case Number: T 0368/08 - 3.2.05

Application Number: 99949020.4

Publication Number: 1038689

IPC: B41M 1/34

Language of the proceedings: EN

Title of invention:

Device for the decoration of ceramic tiles

Patentee:

Tomas Claramonte, José Vicente

Opponent 02:

PATRAM LTD.

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56, 84, 114, 123(2)

EPC R. 99, 101

Relevant legal provisions (EPC 1973):

EPC R. 55(a)

Keyword:

"Admissibility of the opposition - yes"

"Admissibility of the appeal - yes"

"Added subject-matter - no (main request and auxiliary request 1)"

"Novelty - yes (main request and auxiliary request 1)"

"Inventive step - no (main request)"

"Clarity - yes (auxiliary request 1)"

"Inventive step - yes (auxiliary request 1)"

Decisions cited:

-

Catchword:

-



Case Number: T 0368/08 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 13 August 2009

Appellant:
(Opponent 02)

PATRAM LTD.
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Representative:

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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted
20 December 2007 concerning maintenance of the
European patent No. 1038689 in amended form.

Composition of the Board:

Chairman: W. Zellhuber
Members: H. Schram
C. Rennie-Smith

Summary of Facts and Submissions

I. Patram Ltd. (opponent 02, henceforth appellant) lodged an appeal against the decision of the Opposition Division posted on 20 December 2007 maintaining the European patent No. 1 038 689 in amended form on the basis of the main request of the respondent (patent proprietor) filed on 28 November 2007.

The Opposition Division held that the grounds of opposition under Article 100(a) EPC (lack of novelty, Article 54 EPC, and lack of inventive step, Article 56 EPC) did not prejudice the maintenance of the patent in amended form.

II. In a communication dated 6 August 2009 the Board noticed that in the notice of opposition the name and address of the opponent were given as Patram Ltd., 105 London Road, Sevenoaks, Kent TN13 1BH, GB, but that on the last page of the statement of grounds of appeal filed on 21 April 2008, the name of the appellant was given as Patram (Patent and Trademark Administration) Ltd. The Board also noticed that there was currently a registered English company by the name of Patram Ltd. whose registered office address is Unit D26, Basepoint Business Centre, 110 Butterfield, Great Marlings, Luton, Bedfordshire LU2 8DL, GB, and that there had been a company by the name of Patram (Patent and Trademark Administration) Ltd. whose registered office address was Begbie House, 105 London Road, Sevenoaks, Kent TN13 1BH, GB. This latter company was dissolved on 20 July 2004 and accordingly was not in existence at the date when the Opposition was filed. The last paragraph of the communication read: "The Board

anticipates that the parties may wish to consider this matter and that it will be a subject for discussion at the oral proceedings."

III. Oral proceedings were held before the Board of Appeal on 13 August 2009.

IV. The appellant requested that the decision under appeal be set aside and that the patent in suit be revoked.

The respondent requested that the appeal be rejected as inadmissible or alternatively 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 either of the sets of claims filed as auxiliary requests 1 and 2 on 5 September 2008.

V. Claim 1 as maintained by the Opposition Division reads as follows:

"1. A device for decorating ceramic tiles, the device comprising projection means for projecting ink on each tile (2) in order to print a motif on the tile (2), said tile (2) arranged on a conveyor means (1) for conveyance in accordance with a trajectory, and at least one printing head (3);

the at least one printing head (3) comprises at least two printing modules (5) that are connected to a control unit (13), each of the printing modules (5) being arranged to project ink on the tile (2) in accordance with a printing band (f) of a printing module (5) corresponding to a portion of a tile width;

operation of each printing module (5) being independently controlled by the control unit (13),

each printing module (5) being a replaceable module comprising connecting means for individual connection to the printing head (3),

wherein

the printing modules (5) are arranged in parallel with a degree of nonalignment with respect to each other,

each printing module (5) comprises an independent microprocessor (10) and an independent memory (11),

the printing modules (5) are arranged in the printing head (3) obliquely with respect to the trajectory of the tile (2), such that the printing band (f) of each printing module (5) extends to the printing band (f) of at least one adjacent printing module (5) and such that the printing bands (f) of the obliquely-arranged printing modules cover at least the tile width."

Claim 1 of auxiliary request 1 differs from claim 1 as maintained in that at the end of said claim the following feature is added: "and the decorative motif of the tile is a function of a program, which can be modified by each of the microprocessors upon partially reading the information contained in the memory for printing different decorative motifs".

VI. The following documents were *inter alia* referred to in the appeal proceedings:

D1 US-A 5,408,590

D9 US-A 6,068,367

D9A EP-A2 0 652 107

D31 DE-T2 693 06 859

D38 Declaration of Mr Keith Stanley Warren dated
11 August 2009

VII. The arguments of the appellant, in writing and during the oral proceedings, can be summarized as follows:

Admissibility of the opposition and of the appeal

The opponent was Patram Ltd. having currently (as from 29 April 2008) its registered office address in Luton, Bedfordshire, GB. According to the general Authorization No. 48141 dated 17 March 2004, Patram Ltd. had at that time its principal place of business at Begbie House, 105 London Road, Sevenoaks, Kent TN13 1BH, GB. [The principal place of business was subsequently transferred to 17 William Cobbett House, 1 Scarsdale Place, London W8 5SY, GB.] Mentioning the name Patram (Patent and Trademark Administration) Ltd. on the last page of the statement of grounds of appeal was an inadvertent mistake. The reasons for the mistake were the following: the name of that company was very similar to the name of the appellant, it had its registered office address at Begbie House, 105 London Road, Sevenoaks, Kent TN13 1BH, GB, ie the same address as the principal place of business of Patram Ltd. when the opposition was filed, and it was also a client of the appellant's representative until it was dissolved on 20 July 2004. It followed that there was no doubt concerning the identity of the opponent-appellant and that both the opposition and the appeal were admissible.

Admissibility of the amendments, Article 123(2) EPC

In claim 5 of the application as filed it was disclosed that "each independent printing module (5) ... operate independently under the control of the control unit (13)", see letter filed on 27 February 2009, point 4, pages 8 and 9. The feature "*operation of each printing module (5) being independently controlled by the control unit (13)*" present in claim 1 of all requests therefore introduced subject-matter which extended beyond the content of the application as filed, contrary to Article 123(2) EPC.

Claims as maintained - objection of lack of novelty, Article 54 EPC

Document D1 disclosed a device suitable for decorating ceramic tiles with all the features of claim 1 as maintained. The reasons were as follows. The print heads 227, ..., 237 with the corresponding DIDI boards corresponded to the printing modules mentioned in claim 1 as maintained. What was referred to as the "printing head" in said claim was merely a frame (comprises at least two printing modules). Since the positions of each of the print heads of document D1 were fixed to the substrate, their positions were also fixed relative to each other, ie they had to be held in a kind of frame. The term "module" encompassed a group of components performing a defined task, which components were not necessarily combined in a single unit. That the module was said to be "replaceable" did not mean that the module was necessarily a plug-in unit (it could be mechanically fixed to the print head by eg

screws). Moreover, claim 1 as maintained did not rule out that only the print head was replaceable. The DIDI boards were installed in printers 220 - 223 (see column 4, lines 29 to 31, of document D1), which in turn were connected by a standard parallel interface to the computer 201 (see column 6, lines 26 to 32, of document D1). Such an interface was usually accomplished by a plug-in connection. It followed that the print heads were replaceable. The print heads shown in Figure 1 of document D1 were arranged in an echelon formation (see column 4, line 24, of document D1) and staggered along the substrate (see column 3, lines 12 and 13, of document D1) so that they were "arranged in parallel with a degree of nonalignment with respect to each other" as required in claim 1 as maintained. The last feature of claim 1 as maintained was also fulfilled, since the device of document D1 was capable of printing along the width of the substrate, eg a solitary line (see column 4, lines 63 to 66, of document D1).

Claims as maintained - objection of lack of inventive step, Article 56 EPC

Document D1 represented the closest state of the art. This document disclosed a printing system comprising a plurality of stationary ink jet print heads ("ink jet printers") for printing along the width of a substrate 210 or object 211 travelling along a conveyor (cf. Figure 2, showing a three-dimensional object). Although in document D1 it was not stated that the printing system could be used for decorating ceramic tiles, it was known in the art that ink jet printers were used for that purpose. The subject-matter of claim 1 as

maintained thus differed from the printing system known from document D1 substantially in that each printing head comprised an independent microprocessor and an independent memory, in other words that each printing head was modular. The advantage of a modular approach was that in case of a failure the printing module could be replaced (cf. paragraphs [0007] and [0033] of the patent in suit). The objective problem to be solved was therefore to facilitate the repair of the ink jet printer having multiple print heads known from document D1. This problem, and its solution, were already known from eg documents D31 and D9A. Document D31 disclosed (see claim 1, and page 2, third paragraph) a replaceable printing module, wherein the "electronics" (see Figure 3: microcontroller 46, memory 42, 44) and the print head were integrated in a single unit 10. A printing device having multiple print heads of the modular type was already known from document D9A, see column 3, lines 37 to 43. The "intelligence" (control unit 18) and the ink nozzles of said device were integrated in a single module mounted on a base frame in a removable manner with a view to facilitate the replacement of defective modules (see column 4, lines 11 to 22). It was thus obvious to the person skilled in the art starting from document D1 to integrate each print head and its intelligence in a single, replaceable module as taught by document D31 or D9A.

*Auxiliary request 1 - admissibility of the amendments,
Articles 84 and 123(2) EPC*

Claim 1 of auxiliary request 1 referred to "a program" without specifying where that program was stored, namely in the central microprocessor 16, cf. paragraphs [0031] and [0033] of the application as filed (published version). Claim 1 of auxiliary request 1 therefore extended beyond the content of the application as filed. The last feature of claim 1 of auxiliary request 1 was unclear, because it was not clear whether the program in the central microprocessor 16 was modified, or a program in the printing module, and whether the program was modified after, or as a result of reading the information of said program.

Auxiliary request 1 - objection of lack of inventive step, Article 56 EPC

The additional feature of claim 1 of auxiliary request 1 with respect to claim 1 as maintained solved the problem of producing decorated tiles of which no one was identical to another. There were only two possibilities to achieve this: modifying the motif in the central memory ("external solution"), or modifying it in the decentralized memories of each of the print heads ("internal solution"). The external solution had the disadvantage that for printing each new tile a new motif had to be sent to the print heads, so the person skilled in the art would choose the internal solution. In documents D9A and D31 the latter solution was already alluded to, see column 6, lines 39 to 56, of document D9A and page 5, first full paragraph of document D31. The subject-matter of claim 1 of

auxiliary request 1 did therefore not involve an inventive step, Article 56 EPC.

VIII. The respondent's arguments in writing can be summarized as follows:

Admissibility of the opposition and of the appeal

It followed from the information annexed to the communication dated 6 August 2009 of the Board that if the name of opponent 02, Patram Ltd., was correct, the address 105 London Road, Sevenoaks, Kent TN13 1BH, GB in the notice of opposition was wrong, and that if the address of opponent 02 was correct, the name of the opponent was wrong (instead of Patram Ltd., the true name of opponent 02 was Patram (Patent and Trademark Administration) Ltd.). In either case it was not possible to conclude which was the true identity of opponent 02. The opposition was therefore inadmissible. Consequently, the appeal was therefore also inadmissible. Moreover, the statement of grounds of appeal was signed by a different company, namely Patram (Patent and Trademark Administration) Ltd., than the company that had filed the notice of appeal, namely Patram Ltd. The appeal was for that reason also inadmissible.

Late-filed document D9A not to be admitted

Document D9A, which was filed with the statement of grounds of appeal, should not be admitted into the appeal proceedings. That the family member of this document filed within the opposition period was found not to be comprised in the prior art for the patent in

suit under Article 54(2) EPC, was no excuse for the late filing of document D9A, since this fact had long been known to the appellant (see point 13 of the communication of the Opposition Division annexed to the summons to oral proceedings dated 11 April 2007). Moreover, the appellant had not given any reasons why this document could not have been filed earlier.

*Claims as maintained - objection of lack of novelty,
Article 54 EPC*

Each of the printing modules referred to in claim 1 as maintained included ink projecting means, a microprocessor and a memory in a single unit. This followed from the fact that they were comprised in another unit, ie the printing head. The printing system known from document D1 comprised a computer controlling multiple ink jet printers. However, common ink jet printers were not suitable for decorating ceramic tiles because the ink for decorating such tiles had a high pigment content and would clog up a normal ink jet printer. The print heads of document D1 comprised neither a microprocessor nor a memory in a single unit. Document D1 did not disclose that the print heads were held in a frame. The print heads shown in Figure 1 of document D1 were arranged in a straight line, ie they were aligned, and thus had no "degree of nonalignment with respect to each other" as required by claim 1 as maintained. The printing system of document D1 was designed to print text, ie a string of characters or letters, numbers or symbols, or eg a line such as ==, it could not print a continuous line. The printing bands of the print heads of document D1 therefore did not cover the full width of the substrate. The subject-

matter of claim 1 as maintained was therefore new,
Article 54 EPC.

*Claims as maintained - objection of lack of inventive
step, Article 56 EPC*

For decorating ceramic tiles with an ink jet printer special inks were necessary. Moreover, the ink jet printer had to be able to cover the whole upper surface of the tiles completely with ink. Document D1 failed to disclose such inks and the printing system disclosed therein could not cover a tile with ink. Document D1 did not therefore disclose "A device for decorating ceramic tiles" as required by claim 1 as maintained, and was not a good starting point for assessing inventive step. Document D31 related to an ink jet printer for printing on paper having a single print head (see the paragraph bridging pages 4 and 5, where it is stated: .. to keep paper dust and other dirt out of the print head). Document D9A related to an ink jet printer which used thermal energy to eject ink (unlike the printer of document D1 which used a transducer for that purpose). The print heads shown in Figure 1 of document D9A were arranged in a straight line. The person skilled in the art of printing on ceramic tiles had no incentive to consult documents D1, D31 or D9A, less to combine document D1 with D31 or document D1 with D9A. Even if the person skilled in the art would combine document D1 with document D31 or D9A, he or she would not arrive at the claimed invention. The subject-matter of claim 1 as maintained therefore involved an inventive step, Article 56 EPC.

*Auxiliary request 1 - admissibility of the amendments,
Articles 84 and 123(2) EPC*

The subject-matter of claim 1 of auxiliary request 1 was clear. A basis for the last feature of this claim was paragraph [0033] of the application as filed (published version).

Auxiliary request 1 - objection of lack of inventive step, Article 56 EPC

The last feature of claim 1 of auxiliary request 1 stated that the microprocessors were capable of modifying the printed motif. None of the cited prior art documents disclosed or suggested this feature. Prior art print heads are "passive" devices that receive data to be printed and print them. It was therefore neither known nor obvious to include printing modules that change the motif. The advantage was that each tile could be decorated with a different (eg marble) motif so that no two tiles were identical, without having the need to load a complete new motif for each tile. It followed that the subject-matter of claim 1 of auxiliary request 1 involved an inventive step, Article 56 EPC.

Reasons for the Decision

1. *Admissibility of the opposition*

Patram Ltd., 105 London Road, Sevenoaks, Kent TN13 1BH, Great Britain is named in the decision under appeal as opponent 02.

The appellant has filed evidence that the principal place of business of Patram Ltd. (opponent 02) at the time of filing the notice of opposition was the address indicated in that notice, cf. document D38.

The submission of the respondent, that at the time of filing the notice of opposition either the address or the name of opponent 02 was wrong, is therefore not convincing.

In the judgement of the Board, the notice of opposition meets the requirement of Rule 55(a) EPC 1973 (Rule 76(2) (a) EPC), ie that the opponent must be identifiable.

It may be noticed that the registered office of opponent 02 was located at 12 Gleneagles Court, Brighton Road, Crawley, West Sussex, RH10 6AD, GB, at the time of filing of the opposition (cf. document D38), but that Rule 26, paragraph 2(c) EPC 1973 mentioned in Rule 55(a) EPC 1973 does not require that the registered office of a British company shall be given.

2. *Admissibility of the appeal*

The appeal was correctly filed in the name of Patram Ltd., see point I above. The first page of the statement of grounds of appeal identifies "Einsprechende OPPO 02" as PATRAM LTD (see also page 2, first paragraph, of the statement of grounds, where "Einsprechende OPPO 02" is referred to as appellant). The impugned decision is also correctly identified in

the notice of appeal (cf. Rule 99(1)(b) EPC). In the judgement of the Board, the appellant is therefore sufficiently identified in the notice of appeal, cf. Rule 99(1)(a) EPC.

The penultimate paragraph of the statement of grounds reads:

"PATRAM (Patent and Trademark Administration) LTD.
durch
[signature]
Dr. Günter Secklehner".

The Board has made on-line inquiries of Companies House (the government agency which incorporates and dissolves and maintains statutory information about companies in the United Kingdom) and ascertained that this company was dissolved on 20 July 2004. This information was communicated to the parties in the communication dated 6 August 2009 (see point II above).

The explanation of Mr Secklehner, the representative of the appellant, that he inadvertently made a mistake, ie naming the wrong company, on the last page of the statement of grounds, can be accepted, since that wrongly named company, *Patram (Patent and Trademark Administration) Ltd.*, was no longer in existence at that time.

The submission of the respondent, that the statement of grounds was filed by a different company than the company who filed the appeal –contrary to Rule 99(2) EPC– is not convincing. It was not submitted

by the respondent that the appeal did not comply with any other provision mentioned in Rule 99 or 101 EPC.

In the judgement of the Board, the appeal is therefore admissible.

3. *Late filed documents*

The appellant filed four documents for the first time with its statement of grounds of appeal, indicating that one of these documents, namely document D9A, was a family member of document D9 which was filed in the opposition proceedings. In its reply to the appeal dated 5 September 2008 the respondent duly discussed the newly filed documents including document D9A without raising any issue of admissibility.

Document D9A was filed, because document D9 was not comprised in the prior art for the patent in suit (see Reasons point 1 of the decision under appeal). Since document D9A discloses (see column 4, lines 11 to 22) a printing device having printing modules which are mounted on a base frame in a removable and replaceable manner, this document is *prima facie* a relevant document.

In exercising its discretionary power under Article 114 EPC, document D9A is admitted into the appeal proceedings.

Claims as maintained

4. *Admissibility of the amendments, Article 123(2) EPC*

A basis for the contested feature "*operation of each printing module (5) being independently controlled by the control unit (13)*" present in claim 1 as granted and still present in claim 1 as maintained is claim 1 of the application as filed (published version), which discloses that "*a control unit (13) ... controls the operation of each printing module independently*".

It follows that claim 1 as maintained does not contain subject-matter extending beyond the content of the application as filed, Article 123(2) EPC.

In view of this positive outcome for the respondent, it was not necessary to examine whether the ground for opposition under Article 123(2) EPC raised by the appellant amounted to –since the contested feature was already present in claim 1 as granted and none of the two oppositions was based on the ground for opposition under Article 100(c) EPC– a fresh ground for opposition, which may only be considered in appeal proceedings with the approval of the patentee.

5. *Interpretation of claim 1 as maintained*

Claim 1 as maintained relates to a device for decorating ceramic tiles having at least one printing head (3) comprising at least two printing modules (5). The claim stipulates *inter alia* that:

- (i) each of the printing modules (5) being arranged to project ink on the tile (2) ...
- (ii) each printing module (5) being a replaceable module ...
- (iii) each printing module (5) comprises an independent microprocessor (10) and an independent memory (11)
- (iv) the printing modules (5) are arranged in the printing head (3)

"replaceable module"

It follows from feature (iv) that the printing module, ie all of it, is arranged in the printing head (3) (this applies to each printing module). A printing module comprises *inter alia* means to project ink (usually referred to as "ink discharging means" or "print head") (cf. feature (i)), and a microprocessor and a memory, cf. feature (iii). Claim 1 as maintained requires that the printing module as a whole, ie including the microprocessor and the memory, is arranged on the printing head. Claim 1 as maintained requires that the printing module is a replaceable module, cf. feature (ii). The expression "replaceable module" underlines that the printing module is a single unit, which is replaceable as a whole.

"for decorating ceramic tiles"

The term "decorating" encompasses in the context of claim 1 of the main request printing a motif on a tile. Since "*the printing bands (f) of the obliquely-arranged printing modules cover at least the tile width*" (see the last feature of claim 1 of the main request) the device is capable of printing a motif extending across

the width of a tile. Claim 1 does not require that the device actually covers (or is capable of covering) the whole upper surface of a tile completely with ink.

6. *Objection of lack of novelty, Article 54 EPC*

Document D1 discloses a printing system for printing a string of letters, numbers or symbols on a moving substrate or object, comprising a plurality of ink jet printers 220, 223, wherein each printer contains a communication board called the direct ink drop interface board (DIDI board 240, 243) and has a print head 227, ..., 237 attached to it, cf. column 3, lines 22 to 30, column 5, lines 3 to 6, and Figure 1.

Document D1 does not disclose that the DIDI boards and the print heads form a self-contained single unit. Even if it were assumed that each print head comprised its corresponding DIDI board and that the resulting "print modules" were held in some sort of frame, this is not to say that each such print module is a replaceable module. Document D1 does not disclose that the print heads 227 - 237 can be individually replaced.

In the judgement of the Board, the subject-matter of claim 1 as maintained is therefore new, Article 54 EPC.

7. *Objection of lack of inventive step, Article 56 EPC*

Document D1 represents the closest prior art. The printing system known from this document uses multiple ink-jet printers which are per se known in the art and which are all controlled by a single computer for printing along a direction other than the length of the

printing medium (see column 1, lines 1, 2, and 64 to 68). Since it is known in the art that ink jet printers can be used for decorating ceramic tiles —this was not contested by the respondent— the absence of an explicit hint in document D1 that the printing system disclosed therein can be used for decorating ceramic tiles does not disqualify this document as a starting point for assessing inventive step. The printing system (see Figure 2 of document D1) is capable of printing on a slab-like object 211 which is arranged on a conveyor means. If the person skilled in the art would wish to print a motif on a ceramic tile, he or she would choose the appropriate ink.

The respondent has argued that document D1 did not disclose that the printing system was capable of printing a continuous line across the width of the object. However, in column 4, lines 64 and 65, of document D1 it is stated that "For example, to print a solitary line along the width of the substrate, the computer ...". The respondent further argued that a solitary line could be a dashed solitary line and was not necessarily a continuous solitary line. However, even if this were the case, this difference would not contribute to inventive step, since the person skilled in the art who wishes to print a continuous line across the width of the object, which is quite usual, would simply arrange the prints heads in such a way that a continuous line results.

Claim 1 as maintained requires that "*the printing modules (5) are arranged in parallel with a degree of nonalignment with respect to each other*". Figure 2 of the patent in suit shows two rows of 5 printing modules

aligned in a direction perpendicular to the conveyor belt's line of travel, wherein each printing module in a row is staggered with respect to the printing module in the neighbouring row. The print heads shown in Figure 1 of document D1 are neither aligned in the direction of the conveyor belt's line of travel L, nor in a direction W perpendicular thereto in a plane parallel to the conveyor belt, they are arranged in an echelon formation, ie staggered along the length of the object. In the judgement of the Board, this arrangement meets the *nonalignment* requirement set out in claim 1 as maintained.

The subject-matter of claim 1 as maintained differs (see point 6 above, and apart from the differences noted above) therefore from the printing system disclosed in document D1 substantially in that each printing module (5) comprises an independent microprocessor (10) and an independent memory (11), viz. that each printing module (5) is a self-contained single replaceable unit.

The distinguishing feature solves the problem of providing a device having a printing head with multiple ink discharging means that can be easily repaired.

Replaceable printing modules, whereby the intelligence (electronic components such as a microprocessor / microcontroller, memory) and the print head are integrated in a single unit are known in the art and have been developed for the same purpose (see document D31, page 2, third paragraph, and claim 1, and document D9A, Figure 1, column 4, lines 11 to 22, and column 7, lines 9 and 10).

In the judgement of the Board the person skilled in the art starting from the printing system known from document D1 and seeking to solve the above problem, would adopt a modular approach for a printing head with multiple ink discharging means, whereby the microprocessor, memory and the ink discharging means are integrated in a replaceable single unit.

Consequently, the subject-matter of claim 1 as maintained lacks an inventive step, Article 56 EPC.

Auxiliary request 1

8. *Admissibility of the amendments, Articles 84 and 123(2) EPC*
- 8.1 Claim 1 of auxiliary request 1 differs from claim 1 as maintained in that the following feature has been added at the end of the claim: "*and the decorative motif of the tile is a function of a program, which can be modified by each of the microprocessors upon partially reading the information contained in the memory for printing different decorative motifs*".
- 8.2 The appellant has submitted that the additional feature of claim 1 of auxiliary request 1 was unclear, because it was not clear whether the program in the central microprocessor 16 was modified, or a program in the printing module, and whether the program was modified after, or as a result of reading the information of said program.

In the opinion of the Board, the feature "and the decorative motif of the tile is a function of a program, which can be modified by ..." means in the context of claim 1 of auxiliary request 1 that the decorative motif ("program") to be printed by a particular printing module on the tile is the decorative basic motif (as instructed by the central microprocessor 16, which sends different instructions to each one of the printing modules 5) which motif ("program") is "modified" by partially reading the information contained in the memory of said printing module, so that a different decorative motif is finally printed.

In the judgement of the Board, this feature, and also claim 1 of auxiliary request 1 as a whole, is clear, Article 84 EPC.

- 8.3 A basis for the first half-sentence of the additional feature, viz. *"and the decorative motif of the tile is a function of a program,"* can be found in paragraph [0031] of the application as filed (published version): "The microprocessor (16) includes the corresponding memory in which the operating program according to the desired decorative motif is included". A basis for the second half-sentence of the additional feature, viz. *"which can be modified by each of the microprocessors upon partially reading the information contained in the memory for printing different decorative motifs"* can be found in the following passage of paragraph [0033] of the application as filed (published version): "... the decorative motif of the tile is a function of the included program, which in turn should be modified by each one of the microprocessors (10), upon partially

reading the information contained in the memory (11), printing different decorative motifs".

The appellant has submitted that since claim 1 of auxiliary request 1 referred to "a program" without specifying where that program was stored (namely in the central microprocessor 16), said claim extended beyond the content of the application as filed.

Firstly, claim 1 of the application as filed (published version) already makes it clear that the way wherein the printing modules 5 receive instructions in order to print the desired motif on the tile is not relevant to the claimed device, since that information is not part of the claim. Secondly, claim 1 of auxiliary request 1 is directed to a device. The additional feature thus has to be construed as meaning that each printing module is designed so that a program defining the (basic or generic) decorative motif can be modified by each of the microprocessors upon partially reading the information contained in the memory for printing different decorative motifs. Since the actually desired (basic or generic) decorative motif may differ from use to use, the program defining that motif is not a feature characterizing the device as such. In the judgement of the Board, therefore not specifying where the program containing the information about the actually desired (basic or generic) motif is stored, does not provide a technical contribution to the claim.

Hence the feature "*and the decorative motif of the tile is a function of a program,*" does not introduce any additional subject-matter into the claim and the requirements of Article 123(2) are thus satisfied.

9. *Objection of lack of inventive step, Article 56 EPC*

The added feature (see point 8.1 above) is not known from, nor suggested by the prior art. The feature not only requires that *"the decorative motif of a tile is a function of a program, which can be modified by each of the microprocessors"* (rather than loading a completely new motif, or loading data the pixels of which are to be printed differently, stored in a central microprocessor), it also stipulates the way in which the decorative motif is modified, namely *"upon partially reading the information contained in the memory"*. This opens the possibility of creating a series of tiles which have the same base motif (such as eg a marble-, or wood-like motif), but which nevertheless are not identical.

The subject-matter of claim 1 of auxiliary request 1 is therefore not obvious to the person skilled in the art and hence involves an inventive step within the meaning of Article 56 EPC.

The subject-matter of claims 2 to 6 which are dependant on claim 1 similarly involve an inventive step.

Auxiliary request 2

10. Since auxiliary request 1 of the respondent is allowable, there is no need to consider auxiliary request 2.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent on the basis of claims 1 to 6 of auxiliary request 1 filed on 5 September 2008, page 2 of the description as filed during the oral proceedings and pages 3 and 4 of the description and the drawings as granted.

The Registrar:

The Chairman:

S. Sánchez Chiquero

W. Zellhuber