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**Datasheet for the decision
of 8 July 2010**

Case Number: T 1661/08 - 3.2.05

Application Number: 01126895.0

Publication Number: 1188575

IPC: B41M 5/035

Language of the proceedings: EN

Title of invention:

Process for the production of variously painted and/or decorated artefacts by means of the technique of transfer from a sublimable colour support

Patentee:

V.I.V. International S.p.A.

Opponent:

Texing S.r.l.
S.E.F. Italia S.r.l.

Headword:

-

Relevant legal provisions:

EPC Art. 76(1)

Relevant legal provisions (EPC 1973):

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Keyword:

"Matter extending beyond the disclosure of the patent application (all requests, yes)"

Decisions cited:

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Catchword:

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Case Number: T 1661/08 - 3.2.05

DECISION
of the Technical Board of Appeal 3.2.05
of 8 July 2010

Appellant: V.I.V. International S.p.A.
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Respondent: Texing S.r.l.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 20 June 2008
revoking European patent No. 1188575 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: W. Zellhuber
Members: P. Michel
E. Lachacinski

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking European Patent No. 1 188 575 on the ground of extension of subject-matter under Articles 76(1) and 123(2) EPC.

II. The appellant requests that the decision under appeal be set aside and maintenance of the patent as granted (main request) or on the basis of first and second auxiliary requests filed during the proceedings before the opposition division. A request for oral proceedings was withdrawn in a letter dated 11 May 2010.

The respondent (opponent) and an intervener request dismissal of the appeal.

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

"1. Process for decorating artefacts having cavities or recesses, with a sublimable decoration of a transfer support, comprising:

(a) resting an artefact to be decorated on a work bench and preparing said artefact on said work bench, by tight-closing said artefact into said transfer support having the shape of a bag, or a stocking, or an envelope;

(b) creating a vacuum between said transfer support and said artefact, so that said transfer support adheres and exercises a pressure on said artefact;

(c) heating said artefact through heating means located above said work bench and associated to

ventilation and air circulation, said heating means being positioned in a hood."

Claim 1 of the first auxiliary request of the appellant differs from claim 1 of the main request in that the phrase "to the surface of said artefact by effect of said vacuum" is introduced after the words "so that said transfer support adheres" in paragraph (b).

Claim 1 of the second auxiliary request of the appellant differs from claim 1 of the first auxiliary request in that the phrase "said transfer support being made of a gas-tight plastic material" is introduced after the words "said transfer support having the shape of a bag, or a stocking, or an envelope" in paragraph (a), and the word "directly" is introduced after the word "vacuum" in paragraph (b).

IV. The appellant argued substantially as follows in the written procedure:

Paragraph [0025] of the parent application as published (EP-A-0 950 540) provides a disclosure of a process not restricted to the features set out in paragraph [0013]. Paragraph [0025] does not refer in any way to paragraph [0013]. The word "suitable", as used in paragraph [0025], merely indicates that the apparatus is able to carry out a process satisfying the objects of paragraphs [0009] to [0012].

It is noted that claim 12 of EP-A-0 950 540 as granted does not include the features that the transfer support comprises "a supporting base from gas-tight thermoformable plastic material", and heating is

carried out "at temperatures on the order of 200-230°C, for a time of from about 30 seconds to 30 minutes, to perform the transfer and the polymerisation of the final colours from the transfer support to the artefact", so that these features cannot be regarded as being essential.

Paragraph [0025] of the parent application as published thus provides a proper basis for claim 1 of the patent in suit.

In addition, paragraphs [0016] to [0018] of the parent application indicate that the use of a supporting base from gas-tight thermoformable plastic material is only necessary in order to obtain an artefact whose surface is protected by a covering film, as described in paragraph [0012].

The person skilled in the art would appreciate that the temperature and time ranges disclosed in the parent application are merely examples of suitable temperatures and times. The temperature and time ranges would be chosen according to the nature of the sublimable colours.

The subject-matter of claim 1 according to the main request thus does not extend beyond the content of the parent application and complies with the requirements of Article 76(1) EPC.

Claim 1 of the first and second auxiliary requests is not broader than claim 1 of the main request and thus also complies with the requirements of Article 76(1) EPC.

- V. The respondent and intervener argued substantially as follows in the written procedure:

The only disclosure in the parent application as published of a process for decorating artefacts is in paragraphs [0013] to [0022], and includes the features that the transfer support comprises "a supporting base from gas-tight thermoformable plastic material", and heating is carried out "at temperatures on the order of 200-230°C, for a time of from about 30 seconds to 30 minutes, to perform the transfer and the polymerisation of the final colours from the transfer support to the artefact".

There is no basis in the application as a whole for the omission of these features.

The subject-matter of claim 1 according to the main request and the first and second auxiliary requests thus extends beyond the content of the parent application and does not comply with the requirements of Article 76(1) EPC.

Reasons for the Decision

Article 76(1) EPC

1. Main request

In paragraph [0013] and claim 1 of the parent application as published (EP-A-0 950 540), there is disclosed a process in which, inter alia,

(i) the transfer support comprises "a supporting base from gas-tight thermoformable plastic material", and

(ii) heating is carried out "at temperatures on the order of 200-230°C, for a time of from about 30 seconds to 30 minutes, to perform the transfer and the polymerisation of the final colours from the transfer support to the artefact".

Paragraph [0025] of the parent application relates to an apparatus "suitable to realise variously decorated artefacts according to the present invention". This paragraph does not mention the process features referred to in the preceding paragraph. However, in order for the apparatus to be capable of carrying out the process as specified in paragraph [0013] and claim 1, it is not necessary to specify the process features. Rather, the skilled reader of the paragraph will appreciate that the apparatus must comprise a heating means which is capable of heating the treated artefact to temperatures of the order of 200-230°C. This paragraph thus cannot be regarded as implying to the skilled reader that particular features of the process as specified in paragraph [0013] and claim 1 of the parent application are optional.

Paragraphs [0016] to [0018] of the parent application relate to a possible use of the supporting base after colour transfer as a protective coating. This in no way suggests that the use of a supporting base from gas-tight thermoformable plastic material is an optional feature.

There is no suggestion in the parent application that the temperatures and times specified in paragraph [0013] and claim 1 could be departed from.

The parent application thus does not disclose a process for decorating artefacts other than a process in which:

(i) the transfer support comprises "a supporting base from gas-tight thermoformable plastic material", and

(ii) heating is carried out "at temperatures on the order of 200-230°C, for a time of from about 30 seconds to 30 minutes, to perform the transfer and the polymerisation of the final colours from the transfer support to the artefact".

The main request thus does not comply with the requirements of Article 76(1) EPC.

2. *First and Second Auxiliary Requests*

The amendments to claim 1 of each of these requests do not introduce the omitted features referred to under point 1 above. The amendments to the claim thus do not overcome the objections under Article 76(1) to claim 1 of the main request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber