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**Datasheet for the decision  
of 22 June 2010**

**Case Number:** T 0639/09 - 3.2.05

**Application Number:** 01201770.3

**Publication Number:** 1228864

**IPC:** B41C 1/05

**Language of the proceedings:** EN

**Title of invention:**

Method for making a printing plate

**Patentee:**

Houtstra Management & Beheer B.V.

**Opponents:**

- 01 Asahi Kasei Chemicals Corporation  
02 Toray Industries, Inc.  
03 Stork Prints Austria GmbH

**Headword:**

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**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

"Extension beyond the content of the application as filed -  
yes"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0639/09 - 3.2.05

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.05  
of 22 June 2010

**Appellant:** Houtstra Management & Beheer B.V.  
(Patent Proprietor) P.O. Box 145  
NL-3890 AC Zeewolde (NL)

**Representative:** -

**Respondent I:** Toray Industries, Inc.  
(Opponent 02) 2-1 Nihonbashi Muromachi 2-chome  
Chuo-ku, Tokyo 103 (JP)

**Representative:** Coleiro, Raymond  
Mewburn Ellis LLP  
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**Respondent II:** Stork Prints Austria GmbH  
(Opponent 03) Kufsteiner Strasse 4  
A-6336 Langkampfen (AT)

**Representative:** Wagner, Bernhard Peter  
Ter Meer Steinmeister & Partner GbR  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 8 January 2009  
revoking European patent No. 1228864 pursuant  
to Article 101(2) EPC.

**Composition of the Board:**

**Chairman:** W. Zellhuber  
**Members:** H. Schram  
E. Lachacinski

## Summary of Facts and Submissions

- I. The appeal is against the decision of the Opposition Division posted on 8 January 2009 revoking European patent No. 1 228 864 on the ground that claim 1 as granted contained subject-matter extending beyond the content of the application as filed, Article 123(2) EPC.
- II. Oral proceedings were held before the Board of Appeal on 22 June 2010. No one was present for the appellant.
- III. The appellant (patent proprietor) requested in writing that the decision under appeal be set aside and that the case be remitted to the Opposition Division for further prosecution on the basis of the set of claims filed on 14 May 2009 as the sole request.

Respondents I and II (opponents 02 and 03) requested that the appeal be dismissed.

- IV. Claim 1 of the sole request reads as follows:

"1. A method for making a printing plate from a basic plate for flexographic printing, in which the basic plate is engraved by means of a laser beam, characterized in that the basic plate is made from a polymer or copolymer to give a cured polymeric material consisting of acrylate or methacrylate material and in that at least a part of the surface of the basic plate is removed by the laser beam to a depth of 0,4 to 9,9 mm.

- V. The arguments of the appellant, in writing, can be summarized as follows:

The expressions "*is made from a polymer or copolymer to give*" and "*consisting of*" in claim 1 of the sole request were based on paragraph [0012] and claim 1 of the application as filed (published version). Claim 1 of the sole request satisfied the requirement that the polymeric material of the base plate was exclusively a cured acrylate or methacrylate polymer, thus overcoming the objections of the Opposition Division. Claim 1 of the sole request thus met the requirements of Article 123(2) EPC.

- VI. The respondents' arguments can be summarized as follows:

According to claim 1 as originally filed, the basic plate "*consists of a cured polymeric material*", whereas according to claim 1 of the sole request the basic plate was "*made from a polymer or copolymer to give a cured polymeric material consisting of acrylate or methacrylate material*". Not only was the expression "*is made from ... to give ...*" unclear. What was more, the amendment "*made from ... material*" was not disclosed in that general form in the passage in column 3, lines 25 to 27, of the application as filed (published version). In said passage it was merely stated that "*a simple basic plate made for example, from a polymer or a copolymer such as a photopolymer, and which is completely cured*" could be treated with a suitable laser beam.

According to paragraphs [0025] and [0026] of the application as filed (published version), the

radiation-curable materials used in the invention generally comprised a binding agent, a photoinitiator or a photoinitiator system, and a radiation-curable component, and that materials, that could be used as binding agents, comprised polymers and copolymers of eg acrylates and methacrylates. There was no basis in these paragraphs, that the basic plate was "*a cured polymeric material consisting of acrylate or methacrylate material*". Moreover, the last feature of claim 1 of the sole request "*at least a part of the surface ... is removed ... to a depth of 0,4 to 9,9 mm*" was only disclosed in connection with non-printing parts. Claim 1 of the sole request thus contravened the requirements of Article 123(2) EPC.

## **Reasons for the Decision**

1. *Objection of extension beyond the content of the application as filed, Article 123(2) EPC*

The feature "*the basic plate is made from a ... material consisting of acrylate or methacrylate material*" in claim 1 of the sole request is not disclosed in the application documents as filed. If the feature were interpreted by the Board as having the meaning "*the base plate is exclusively a cured acrylate or methacrylate polymer*" (as suggested by the appellant) or as "*the basic plate consists of acrylate or methacrylate material*", this would not lead to a different conclusion.

In paragraph [0026] of the application as filed (published version) it is stated that "*[M]aterials that*

*can be used as binding agent comprise polymers and copolymers of acrylates, ...". It is not disclosed that said materials can be used as sole material for the basic plate. On the contrary, in paragraph [0025] of the application as filed (published version) it is stated that "[R]adiation-curable materials generally comprise a binding agent, a photoinitiator or a photoinitiator system, and a radiation-curable component ...".*

In the judgment of the Board, claim 1 of the sole request therefore does not meet the requirements of Article 123(2) EPC.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber