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Datasheet for the decision of 31 August 2018

Case Number: T 0760/13 - 3.5.04

Application Number: 02002141.6

Publication Number: 1229729

IPC: H04N1/405, G06K15/10

Language of the proceedings: EN

Title of invention:
Multiple marker inkjet printing for increased print speed

Applicant:
Hewlett-Packard Development Company, L.P.

Headword:

Relevant legal provisions:
RPBA Art. 12(4)

Keyword:
Admission of amended claims filed with the statement of grounds of appeal (no)

Decisions cited:
G 0010/93, T 0273/11

Catchword:

Europäisches Patentamt
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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0760/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 31 August 2018

Appellant: (Applicant)	Hewlett-Packard Development Company, L.P. 11445 Compaq Center Drive West Houston, TX 77070 (US)
Representative:	Zimmermann, Tankred Klaus Schoppe, Zimmermann, Stöckeler Zinkler, Schenk & Partner mbB Patentanwälte Radlkoferstraße 2 81373 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 4 December 2012 refusing European patent application No. 02002141.6 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	C. Kunzelmann
Members:	M. Paci
	T. Karamanli

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing European patent application No. 02 002 141.6, published as EP 1 229 729 A2.

II. The decision under appeal was based on the grounds that claim 1 according to the sole request then on file did not meet the requirements of Articles 123(2) and 84 EPC, because it contained subject-matter which extended beyond the content of the application as originally filed and it lacked clarity and support by the description. As far as the claims could be understood in the light of the arguments provided by the applicant, the examining division considered that the subject-matter of claim 1 lacked novelty over the disclosure of D5 (EP 0 960 739 A2) and inventive step in view of the disclosure of D1 (EP 0 982 143 A2).

III. With its statement of grounds of appeal, the appellant filed a set of amended claims according to a sole request replacing the claims of the sole request underlying the decision under appeal.

IV. In a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA, OJ EPO 2007, 536) annexed to a summons to oral proceedings, the board indicated that, exercising its discretion under Article 12(4) RPBA, it was inclined not to admit the appellant's sole request into the appeal proceedings because it should have been presented before the department of first instance.

V. By letter of 31 July 2018 the appellant withdrew its request for oral proceedings, requested "a decision based on the file as it stands" and informed the board

that it would not be attending the oral proceedings. It did not comment on the board's communication.

VI. Oral proceedings were held on 31 August 2018. As announced, the duly summoned appellant did not attend.

At the oral proceedings, the chairman noted that it appeared from the file that the appellant had requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the sole request filed with the statement of grounds of appeal.

At the end of the oral proceedings, the chairman announced the board's decision.

VII. Claim 1 according to the appellant's sole request reads as follows:

"A method for printing ink drops in an inkjet printing system (200) where image pixels of a given color can be printed by two or more printheads (222, 224) ejecting droplets of said given color and mounted in a scanning printhead carriage, the method comprising:

receiving print data from a print job source (72);

producing from the print data a first data plane for said given color;

using the first data plane to produce a second data plane for said given color;

using said first data plane to produce a first set of printhead data signals for producing droplets, and said second data plane to produce a second set of printhead data signals for producing droplets; and

applying said first and second sets of printhead data signals to first and second printheads (222, 224) each for emitting droplets of said given color, wherein

receiving print data from a print job source (72) comprises receiving RGB image data or KCMY data by the inkjet printing system (200),

wherein producing from the print data a first data plane for said given color comprises processing the received image data to obtain image data corresponding to the black color plane, and

wherein using the first data plane to produce a second data plane for said given color comprises processing the received image data corresponding to the black color plane as if it were a secondary color by calculating and assigning ink drops from two different primary color planes to achieve the desired secondary color which results in two color planes whose addition results in the original black image half-toned data, and setting the resulting print data in the two primary color planes to the first and second data planes, respectively."

VIII. The reasons for the decision under appeal where relevant to the present decision may be summarised as follows:

Added subject-matter - Article 123(2) EPC

Claim 1 comprised the step of "processing the contone values to produce ... two or more different data planes of respective halftone values", whereas consistently throughout the application as filed a second plane was generated by replicating or copying the first plane. The broader formulation of this processing step in claim 1 thus extended the claimed subject-matter beyond the content of the application as filed, in violation of the requirements of Article 123(2) EPC.

Clarity and support by the description - Article 84 EPC

In claim 1, the step of processing the contone values to produce two or more planes of halftone values also caused a lack of clarity and of support by the description in the sense of Article 84 EPC because it appeared to mean that the two or more planes were generated during halftoning, which was in contradiction with the description of the application, according to which the replication of the first plane to create the second plane always took place before or after but never during halftoning.

IX. In its statement of grounds of appeal, the appellant essentially argued that the amended claim 1 of the sole request overcame all the objections under Articles 84 and 123(2) EPC raised in the decision under appeal. The amendments were based on claim 1 as originally filed and on page 14, lines 15 and 16, page 14, line 21, to page 15, line 35, and page 3, lines 21 and 22, of the description of the application as filed. Moreover, the subject-matter of amended claim 1 was novel and involved an inventive step in view of prior-art documents D1 and D5.

Reasons for the Decision

1. The appeal is admissible.

Admission of the sole request into the appeal proceedings under Article 12(4) RPBA

2. Pursuant to Article 12(4) RPBA, the board has the power to hold inadmissible a request which could have been presented in the first-instance proceedings but was

not, or was even withdrawn during the first-instance proceedings (see Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.4.3.1 in general and IV.E.4.3.3 b) and c) for *ex parte* appeal proceedings). Since in fact almost every request could have been presented to the department of first instance, the question is whether the situation was such that the present request **should** have been presented at that stage (see, for instance, decision T 273/11, point 1.1 of the Reasons, with references to further decisions).

3. Claim 1 filed with the statement of grounds of appeal has been amended compared to claim 1 underlying the decision under appeal as follows (additions are underlined, deletions are ~~struck through~~):

A method for printing ink drops in an inkjet printing system(200) where image pixels of a given color can be printed by two or more printheads (222, 224) ejecting droplets of said given color and mounted in a scanning printhead carriage, the method comprising:

receiving print data from a print job source (72);

~~color mapping the print data received from the print job source (72) into colors of the inkjet printing system for~~ producing from the print data a first data plane for said given color~~, said first data plane referring to pixel information to be printed with said given color, and said first data plane comprising contone values~~;

~~processing the contone values to produce for said given color two or more different data planes of respective half-tone values corresponding to a number of ink droplets to be printed to represent respective pixels by said two or more printheads;~~

~~on the basis of said two or more data planes of half-tone values, producing corresponding two or more~~

~~sets of printhead data signals for producing droplets; and~~

using the first data plane to produce a second data plane for said given color;

using said first data plane to produce a first set of printhead data signals for producing droplets, and said second data plane to produce a second set of printhead data signals for producing droplets;

and

applying said ~~two or more~~first and second sets of printhead data signals to ~~said two or more~~first and second printheads (222, 224) each for emitting droplets of said given color, wherein receiving print data from a print job source (72) comprises receiving RGB image data or KCMY data by the inkjet printing system (200),

wherein producing from the print data a first data plane for said given color comprises processing the received image data to obtain image data corresponding to the black color plane, and

wherein using the first data plane to produce a second data plane for said given color comprises processing the received image data corresponding to the black color plane as if it were a secondary color by calculating and assigning ink drops from two different primary color planes to achieve the desired secondary color which results in two color planes whose addition results in the original black image half-toned data, and setting the resulting print data in the two primary color planes to the first and second data planes, respectively.

4. The above amendments to claim 1 generally fall into two categories:

- those in the last eleven lines of claim 1 introduce features relating to the production of a halftone image for the black colour by processing the received image

corresponding to the black colour plane as if it were a **secondary** colour generated from two **primary** colour planes; and
- those in the remainder of claim 1 are essentially an attempt to clarify the wording of the claim.

5. The board is of the view that the amended claims of the sole request filed with the statement of grounds of appeal **should** have been presented to the department of first instance for the reasons set out below:

5.1 As to the amendments attempting to clarify the wording of claim 1, they should already have been filed in reaction to the objections under Article 84 EPC raised by the examining division in its (sole) communication under Article 94(3) EPC dated 17 June 2011 and/or in its communication accompanying the summons to oral proceedings.

5.2 As to the amendments re-introducing features relating to treating the black colour as a secondary colour, the board considers that these features were not present in any of the claims underlying the decision under appeal.

The board notes that the following three different sets of claims were examined by the examining division at various stages of the proceedings:
(1) the claims of the application as filed;
(2) the claims filed by letter of 26 October 2011 in response to the examining division's communication pursuant to Article 94(3) EPC dated 17 June 2011; and
(3) the claims underlying the decision under appeal, which were filed by letter of 12 October 2012 in response to the examining division's summons to oral proceedings.

In the first-instance proceedings, however, the only claims comprising features mentioning a secondary colour were claims 15 to 18 of the application as filed. In its communication pursuant to Article 94(3) EPC dated 17 June 2011, the examining division held that these claims were "utterly incomprehensible" and thus could not be examined (see points 3.2 and 7 of the communication). In reaction thereto, the appellant subsequently filed only sets of claims no longer comprising any feature mentioning a secondary colour.

In the communication pursuant to Article 94(3) EPC and in the communication accompanying the summons to oral proceedings, the examining division had raised objections of lack of clarity, lack of novelty and lack of inventive step. If the appellant was of the view that the features mentioning a secondary colour could be important for overcoming these objections, it should have filed a request with claims comprising those features in reply to the communication pursuant to Article 94(3) EPC and/or the communication accompanying the summons, at least as an auxiliary request.

Moreover, re-introducing features mentioning a secondary colour, as in claim 1 of the sole request filed with the statement of grounds of appeal, raises a number of fresh issues as to compliance with the provisions of Article 123(2) EPC and Article 84 EPC 1973, i.e. issues which were not dealt with in the decision under appeal. Therefore, the admission into the appeal proceedings of a request with claims in which the appellant re-introduced features mentioning a secondary colour would mean that the board would have to examine them and decide on them for the first time on appeal, or remit the case to the examining division for further prosecution. However, according to

established jurisprudence of the boards of appeal, these two procedural options appear inappropriate since the appeal proceedings in *ex parte* cases are primarily concerned with examining the contested decision (G 10/93, OJ EPO 1995, 172, point 4 of the Reasons).

6. The board also notes that the appellant has not justified why the amended claims of the present sole request were not presented in the first-instance proceedings and has not submitted any arguments as to why the board should admit a request based on those claims into the appeal proceedings. In particular, the appellant has not commented on the communication in which the board expressed its provisional opinion as to why it considered that a request with those claims should have been presented before the department of first instance.

7. For the above reasons, the board, exercising its discretion under Article 12(4) RPBA, does not admit the sole request filed with the statement of grounds of appeal into the appeal proceedings.

8. In view of the above, there is no allowable request of the appellant, and so the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Boelicke C. Kunzelmann

Decision electronically authenticated