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**Datasheet for the decision  
of 14 June 2016**

**Case Number:** T 1717/13 - 3.2.05

**Application Number:** 02011281.9

**Publication Number:** 1262317

**IPC:** B41C1/10

**Language of the proceedings:** EN

**Title of invention:**  
Plate producing apparatus

**Patent Proprietor:**  
Dainippon Screen Mfg. Co., Ltd.

**Opponent:**  
Heidelberger Druckmaschinen AG

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 56  
EPC Art. 123(2)  
EPC 1973 R. 67

**Keyword:**

Substantial procedural violation - reimbursement of appeal fee  
(no)

Statement of the opposition division not to accept further  
auxiliary requests (inappropriate)

Amendments - intermediate generalisation allowable (yes)

Inventive step - main request (yes)

**Decisions cited:**

G 0007/93, R 0016/10

**Catchword:**

Inappropriate statement of the opposition division not to  
accept further auxiliary requests, see point 1.5.



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Case Number: T 1717/13 - 3.2.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.05**  
**of 14 June 2016**

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**Representative:** Heiko Keller  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 31 May 2013  
revoking European patent No. 1262317 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. Poock  
**Members:** P. Lanz  
G. Weiss

### **Summary of Facts and Submissions**

- I. The appeal by the patent proprietor is against the decision of the opposition division to revoke European patent EP-B-1 262 317.
- II. During the opposition proceedings, the opponent raised the grounds for opposition according to Article 100(a) EPC 1973 (lack of novelty and lack of inventive step).
- III. Oral proceedings were held before the board of appeal on 14 June 2016.
- IV. The appellant (patent proprietor) requests that the decision under appeal be set aside and that a patent be maintained in amended form on the basis of the set of claims (main request and first to fourth auxiliary requests) filed with letter dated 27 May 2016. Furthermore, the reimbursement of the appeal fee is requested.

The respondent (opponent) requests that the appeal be dismissed.

- V. Independent claim 1 of the main request reads as follows:

"A plate producing apparatus (10) for recording an image on plates (P) retrieved from a plurality of cassettes (31) based on image data (D) transmitted from an image processing device (1), comprising:  
a cassette selection assembly (14) for performing a cassette selection process of selecting one of the plurality of cassettes (31), and moving the selected cassette (31) to a plate feeding assembly (15);

said plate feeding assembly (15) for moving the selected cassette (31), which has been moved from the cassette selection assembly (14) to the plate feeding assembly (15), to a plate feeding position, for retrieving a plate (P) from the selected cassette (31) which has been moved to the plate feeding position, and feeding the plate (P) to an image recording assembly (16) such that the plate is halted at a plate pre-loading position;

said image recording assembly (16) including a loading section (17), an exposure section (18), and an unloading section (19), said loading section (17) being for performing a loading process of mounting, on a recording drum (36) of said exposure section (18), the plate (P) which is halted at the plate pre-loading position;

said exposure section (18) having said recording drum (36) and being for performing an image recording for the plate (P) which is fed by the plate feeding assembly (15) and mounted on the recording drum (36) by the loading section (17), based on the image data (D) transmitted from the image processing device (1);

said unloading section (19) being for performing an unloading process of removing, from the recording drum (36), the plate (P) after the image recording has been performed by said exposure section (18); and

a control assembly (11) for controlling the cassette selection assembly (14), the plate feeding assembly (15), the exposure section (18), the loading section (17), and the unloading section (19), wherein, once the unloading section (19) has completed to perform the unloading process of removing a first plate (P (N-1)) mounted on the recording drum (36), the control assembly (11) outputs a control signal to instruct the loading section (17) to begin a loading process of mounting a second plate (P(N)) which has been fed to

the plate pre-loading position, for which second plate (P(N)) the image recording is to be performed following the first plate (P(N-1)), and the control assembly (11) obtains, from the image processing device (1), concurrently with the instruction to begin the unloading process for the first plate (P(N-1)) performed by the unloading section (19), control information associated with a third plate (P(N+1)) for which third plate (P(N+1)) the image recording is to be performed following the second plate (P(N)), and determines whether or not to perform an exchange of cassettes, by comparing control information of the second plate (P(N)) obtained concurrently with the instruction to begin the unloading process for the first plate with the control information of the third plate (P(N+1)), or by comparing control information of the second plate (P(N)) stored in an image buffer (23) with the control information of the third plate (P(N+1)); and wherein the control assembly (11) causes, when determining that the exchange of cassettes is necessary, the cassette selection assembly (14) to start the cassette selection operation for the third plate (P(N+1)) such that the cassette selection operation for the third plate (P(N+1)) is begun before completion of image recording for the second plate (P(N))."

VI. The arguments presented by the appellant in writing and during the oral proceedings are essentially as follows:

*Alleged procedural violation*

The opposition division committed substantial procedural violations:

- (a) by not admitting further claim amendments to overcome newly raised objections by the opposition division during the oral proceedings; in this respect, the opposition division exercised its discretion to disregard amendments incorrectly;
- (b) by causing the patent proprietor's representative to be taken by surprise during the oral proceedings by giving contradictory reasoning, which made it difficult to react to newly raised objections;
- (c) by not giving sufficient time to take into account the newly raised objections during the oral proceedings and to consider a new version of a main claim in order to be able to appropriately react to the newly raised objections.

Regarding allegation (a), the appellant essentially specifies that the course of the oral proceedings did justify the admission of further submissions/claim amendments in reaction to new objections raised during the oral proceedings. Such claim amendments for overcoming the respective new objections were fully in accordance with procedural expediency, did not constitute any abuse of the procedure and, since the corresponding amendments were exclusively of restricting nature, could reasonably be expected by the opponent and the opposition division. In view of that, the opposition division wrongly exercised its discretion by not admitting the filed third auxiliary request and the offered fourth auxiliary request. Moreover, this was inconsistent with the decision to admit the first auxiliary request, although the circumstances were the same.

Concerning allegations (b) and (c), the appellant argues that the opposition division gave contradictory reasoning as to why the requests were not allowable. Moreover, it had initially asked for a break of at least 30 minutes to prepare the first auxiliary request, taking into account the (partly new) objections raised during the oral proceedings against the main request. Considering the variety of objections raised and the contradictory reasoning provided by the opposition division, the requested duration of the break was already short. However, according the minutes, the oral proceedings were resumed after only 26 minutes, thereby further depriving the appellant of a fair chance to appropriately deal with all objections. The same was true for the break granted for preparing the second auxiliary request, which was only 23 minutes long. It had to be noted that the appellant had asked for more time, which was denied by the opposition division and, unfortunately, not properly reflected in the minutes. In view of the above objections, the opposition procedure did not meet the requirements of a fair trial.

*Added subject-matter*

The amendments of claim 1 according to the main request were based on the embodiment as originally disclosed in Figures 5, 6, 9 and 10 as well as on page 6, fourth paragraph, page 9, whole page, page 10, first paragraph, page 11, second paragraph, page 12, second and third paragraphs, page 15, third paragraph to page 17, first paragraph, page 18, third paragraph and page 22, last paragraph. Although the introduced features were extracted from the description, it was unambiguously clear that they were not inextricably linked to the other features. This was true in



particular for the omitted aspects of the concrete direction of movement of the cassette, of the plate pre-loading position being on the feed path, of the i-turn movement of the plate during ejection and of listing in the claim all apparatus parts controlled by the control assembly. The generalisation of the original embodiment according the claim would thus not present the skilled person with information going beyond the content of the application as filed.

*Inventive step*

The subject-matter claimed differed from document D1 in the features of the last part of the claim starting with "*wherein, once the unloading section (19) ...*". As stated in the patent specification, the objective technical problem was to increase the productivity of the plate producing apparatus. The claimed solution was not rendered obvious by document D1. In particular, the solution known from document D1 was based on controlling the handling of a batch of plates (referred to as "job" in D1); the transferred control information equally related to a "job". By contrast, present claim 1 was directed to processing individual plates and control information belonging to individual plates. According to the present invention the need for an exchange of cassettes was also determined based on a comparison of control information. All that was not derivable from document D1. The claim went even further by defining the point in time at which the control information was processed. The respondent's reasoning was based on an *ex-post facto* analysis since realising that wait times existed and that that they could be reduced by an early start of certain process steps formed part of the inventive contribution of the

present claim. The subject-matter of claim 1 was thus based on an inventive step.

VII. The respondent's submissions in writing and during the oral proceedings may be summarised as follows:

*Alleged procedural violation*

The appellant did not submit any substantive auxiliary requests during the written opposition proceedings. During the oral proceedings, the appellant filed three auxiliary requests. Although being late filed, the opposition division admitted the first and second auxiliary request. All in all, the appellant was given ample opportunity to present its case.

*Added subject-matter*

The respondent puts forward the following four objections of added subject-matter against the claims of the main request:

(i) The general wording "*moving the selected cassette (31) to a plate assembly*" in claim 1 went beyond the original disclosure of a horizontal movement followed by an up-and-down movement on page 9, last paragraph to page 10, first paragraph of the application as filed.

(ii) The feature "*and feeding the plate (P) to an image recording assembly (16) such that the pate is halted at a plate pre-loading position*" was an unallowable generalisation of the original description on page 16, last paragraph to page 17, first paragraph according to which the pre-loading position was "*on the feed path (35)*" and halting the plate was done "*when step S114 has just been completed*".

(iii) In the feature of the *"unloading process of removing, from the recording drum (36), the plate (P)"* the essential aspect to *"move the plate in an i-turn fashion along an ejection path so as to be ejected to the outside"* (cf. original application, page 6, fourth paragraph and page 11, second paragraph) was omitted.

(iv) The feature of *"a control assembly (11) for controlling the cassette selection assembly (14), the plate feeding assembly (15), the exposure section (18), the loading section (17) and the unloading section (19)"* extended beyond the third paragraph of page 12 of the original application which stated that *"the CPU controls the line buffer, the multi-cassette section, the auto-loading section, the loading section, the exposure section and the unloading section"*.

The requirements of Article 123(2) EPC were thus not met.

#### *Inventive step*

The subject-matter claimed differed from document D1 in the features of the last part of the claim starting with *"wherein, once the unloading section (19) ..."*. The technical problem was to increase the productivity of the apparatus by reducing the waiting times. The inventive step assessment had to take into account that, in the present case, the skilled person was familiar with apparatus for producing printing plates, their components and their controlling methods. Starting from document D1 and faced with the problem as mentioned above, the skilled person would, as the most straightforward measure, identify waiting times in the process and reduce them by carrying out the steps of

unloading, loading, exposing, and pre-loading cassette selection in parallel if necessary. If all the steps were started as soon as possible, the waiting time would inevitably be reduced and the productivity of the apparatus increased. The claimed solution was thus immediately obvious to a skilled person. The appellant's argument that document D1 was focused on processing jobs comprising multiple rather than individual plates was not convincing since the document did not exclude a job size of one plate. Moreover, following column 10, lines 63 to 67, the process of document D1 comprised a step of determining whether an exchange of cassettes was needed, which required a comparison of control information.

In view of the above, the subject-matter of claim 1 was not based on an inventive step.

## **Reasons for the Decision**

### *1. Alleged procedural violation*

1.1 From a general point of view, it is first noted that following European patent practice, the opposition division issues the summons together with an annex drawing attention to the points to be discussed (Rule 116(1) EPC) and normally containing the division's provisional opinion, as well as a final date for making written submissions. If it becomes apparent in the oral proceedings that the timely submitted amended claims in reaction to the division's preliminary opinion are not allowable under the EPC, the admission of further requests is at the discretion of the opposition division, which will take into account, *inter alia*, procedural expediency but also whether the new requests are reasonable in number, whether their subject-matter

is based on dependent claims as granted or based on subject-matter not previously covered by the claims and whether they are *prima facie* appropriate for overcoming outstanding objections (cf. Guidelines for Examination in the European Patent Office, November 2015, part E-V, 2.2).

If the way in which a department of first instance has exercised its discretion on admitting requests filed during oral proceedings is challenged in appeal, it is not the function of a board of appeal to review all the facts and circumstances of the case as if it were in the place of the department of first instance, and to decide whether or not it would have exercised such discretion in the same way as or different from the department of first instance. A board of appeal should only overrule the way in which a department of first instance has exercised its discretion if the board concludes that it has done so according to the wrong principles, without taking into account the right principles, or in an unreasonable way (cf. G 7/93, OJ EPO 1994, 775).

- 1.2 The appellant argues that the opposition division committed serious procedural violations by not properly exercising its discretion. These allegations concern the circumstances under which the appellant had to prepare the auxiliary requests 1 to 3 (cf. above allegations (b) and (c)) as well as the non-admission of auxiliary request 3 and the possibility to file further auxiliary requests (cf. above allegation (a)).
  
- 1.3 Turning first to allegation (b), the appellant essentially argues that its representative was caught by surprise by the fact that the opposition division did not comprehensively indicate which of the

objections raised by the opponent under Article 123(2) EPC it shared. In that respect, reference shall first be made to the course of the first instance proceedings. It is noted that the grounds for opposition under Article 100(a) EPC 1973 had been raised in the notice of opposition. The appellant reacted by filing a modified main request, wherein the amendments to the independent claim were largely based on the detailed description. In its annex to the summons, the opposition division expressed the preliminary opinion that the amendments were not in compliance with the provisions of Article 123(2) EPC. One month before the oral proceedings the appellant submitted a new main request in response, which was still largely based on the detailed description. In view of this, the appellant's representative could not be surprised that during the oral proceedings the claim amendments were scrutinised by the respondent and the opposition division in order to assess their compliance with Article 123(2) EPC, in particular since the issues raised at that stage did not concern the claims as granted but post-grant amendments of the claims. Moreover, following established case law of the Enlarged Board of Appeal, the EPC does not entitle a party to be provided with all foreseeable arguments in favour of or against it by the deciding body in advance, a principle which also applies to the decisive reasons (see R 16/10 of 20 December 2010, Reasons, point 2.2.4). Thus, the opposition division was not legally required to provide the appellant with a comprehensive list setting out which of the respondent's objections under Article 123(2) EPC against a specific set of claims it shared at the different stages of the oral proceedings. For these reasons, the board does not concur with the appellant's objection (b).

1.4 Regarding the appellant's allegation (c), it is observed that during the opposition proceedings the appellant filed an amended main request and three auxiliary requests in reaction to the various objections of added subject-matter, all caused by the appellant's claim amendments. The opposition division admitted all of them, except for the third auxiliary request. Based on the minutes of the oral proceedings, it is further noted that the opposition division adjourned the oral proceedings at 11:23 hrs, after having announced that the main request did not meet the requirements of Article 123(2) EPC and again at 14:01 hrs, following the conclusion that the first auxiliary request did not overcome the objection under Article 123(2) EPC. After the first interruption, the appellant submitted a first auxiliary request; after the second break the second and third auxiliary requests were presented. Thus, during the oral proceedings the appellant was given two opportunities to react to the objections raised. Even if the oral proceedings were resumed after a first interruption of 26 minutes (instead of the 30 minutes the appellant had initially asked for), the time given was obviously sufficient to take into account the newly raised objections in the oral proceedings and to prepare an amended set of claims in response. Moreover, as admitted by the appellant, it is not apparent from the minutes that during any of the interruptions the appellant asked for more time for drafting amended requests.

In view of the above, the board does not share the appellant's view that it had insufficient possibility and time to consider the raised deficiencies when preparing the first to third auxiliary requests. Thus, the circumstances under which the appellant had to

prepare these auxiliary requests do not amount to a serious procedural violation.

- 1.5 In the further objection (a), the appellant challenges the way in which a department of first instance has exercised its discretion by not admitting the third auxiliary request and by not accepting further auxiliary requests. In the impugned decision, the opposition division justifies the non-admission of the third auxiliary request by stating that its amendment could, at first sight, not overcome the non-compliance found with respect to the first auxiliary request (cf. Reasons, points 4 and 5). It is, hence, not apparent that the department of first instance exercised its discretion according to the wrong principles or in an unreasonable way. In view of the limited competence to review discretionary first-instance decisions (see point 1.1 above), the board does not see a reason for overruling the opposition division's judgement not to admit the third auxiliary request into the proceedings.

Regarding the possibility of filing further auxiliary requests, the board points to the fact that the second auxiliary request was refused because of a deficiency of added subject-matter regarding a feature ("*[...] and the CPU obtains from the raster image processor, concurrently with the instruction to begin the unloading process for the first plate P(N-1) [...] control information associated with a third plate P(N+1) [...]*"), which was in substance already present in claim 1 of the first auxiliary request, but was in this context, apparently not indicated by the division as being defective. According to the following statement in the minutes (cf. point 8), the appellant had no possibility to react to the refusal of the second



auxiliary request by rectifying this newly established deficiency:

*"8. Based on the above opinion the chairman announced that in the view of the opposition division the proprietor had already been given several opportunities to overcome the problems under Article 123(2) EPC and therefore at this late state of the proceedings further requests were not accepted.*

*8.1 The proprietor announced that by not allowing any more requests the opposition division has violated his right to be heard in accordance with Article 113(1) EPC."*

On the other hand, it has to be taken into account that at that stage of the proceedings the opposition division had already accepted the filing of an amended main request and three auxiliary requests in reaction to the objections of added subject-matter. Except for the third auxiliary request, all of them were admitted into the proceedings. Moreover, the applicant's demand for filing further auxiliary requests did not arise from the introduction of new attacks against the patent in suit and/or the submission of additional prior art documents, but exclusively from the fact that the appellant's numerous attempts to rectify deficiencies under Article 123(2) EPC, on the basis of the detailed description of the embodiments, remained unsuccessful.

In view of the above, the opposition division possibly exceeded its scope of discretion by categorically stating that it would not accept further auxiliary requests without duly taking notice of their content. However, even in case this statement ultimately proves to be arbitrary and thus inappropriate, such erroneous

application of the law does, under the present circumstances, not amount to a substantial procedural violation (cf. Case Law of the Boards of Appeal of the European Patent Office, 7<sup>th</sup> Edition 2013, IV.E.8.3.5). The board judges that, having regard to the overall procedure, the opposition division did not breach the appellant's right to a fair trial. Consequently, the appellant's request for reimbursement of the appeal fee under Rule 67 EPC 1973 (applicable here) is refused.

2. *Main request - added subject-matter*

2.1 The subject-matter of claim 1 of the main request is based on original claim 1 and restricted further with features extracted from the detailed description of the embodiment. The case law typically refers to this type of amendment as an "intermediate generalisation". The parties' views essentially differ on whether or not it was unambiguously clear to a skilled person that all restricting features could be isolated from their originally disclosed context. In particular, the following claim features are objected to by the respondent:

(i) *"moving the selected cassette (31) to a plate assembly",*

(ii) *"and feeding the plate (P) to an image recording assembly (16) such that the plate is halted at a plate pre-loading position",*

(iii) *"unloading process of removing, from the recording drum (36), the plate (P)",*

(iv) *"a control assembly (11) for controlling the cassette selection assembly (14), the plate feeding*

*assembly (15), the exposure section (18), the loading section (17) and the unloading section (19)".*

2.2 As a preliminary remark, the board notes that the respondent's objections primarily point to differences in the wording between the application as filed and the claim amendments. It is, however, generally accepted that for the purposes of Article 123(2) EPC an explicit basis for an amendment in the original application documents is not required as long as the amendment is clearly and unambiguously derivable, using common general knowledge, from the application as filed.

Turning to the respondent's first specific objection (i), it is observed that according to the original disclosure (cf. page 9, lines 11 to 23), a cassette is horizontally moved from the multi-cassette section (or cassette selection assembly) to the autoloading section (or plate feeding assembly); the autoloading section (or plate feeding assembly) then moves up and down the cassette to a predetermined plate feeding position. The present wording of claim 1 generally reflects the function of the multi-cassette section and the autoloading section, in particular the movements of the cassette, without however, indicating their respective directions. In the judgement of the board, it is unambiguously clear to a skilled reader of the original disclosure that the functions of the above sections are independent from the specific cassette movement directions. Therefore, their omission does not constitute an unallowable generalisation. Consequently, the provisions of Article 123(2) EPC are met in that respect.

Concerning the respondent's second objection (ii), it is implicitly clear that the preloading position of the

plate has to be on the feed path. It is equally implicit that the plate movement from the plate feeding position to the pre-loading position (referred to as "step S114" in the detailed description) is completed when the plate is halted at the pre-loading position. Hence, objection (ii) equally does not constitute a violation of Article 123(2) EPC.

The same is true for objection (iii) concerning the allegedly omitted aspect of unloading the plate by moving it in an i-turn fashion. In fact, the statement on page 6, lines 19 to 22, does not refer to an i-turn movement of the plate when unloading it and provides an unambiguous basis for a more general wording of the feature in question.

Finally regarding objection (iv), the amended version of claim 1 defines that the control assembly is suitable for controlling the cassette selection assembly, the plate feeding assembly, the exposure section, the loading and the unloading section. The feature in question makes clear that all claimed machine sections of the apparatus are controlled by the control assembly. The board does not concur with the respondent's objection that the claim erroneously omitted the further aspect of controlling a line buffer 13, which is mentioned in the detailed embodiment on original page 12, lines 15 to 18, for the reason that the line buffer 13 does not, as such, form part of the subject-matter claimed.

In view of the above, the board is satisfied that the wording of claim 1, according to the main request, does not go beyond the content of the application as filed, Article 123(2) EPC.

3. *Main request - inventive step*

- 3.1 Both parties base their respective inventive step assessment on document D1 which relates to a plate producing apparatus. Moreover, the parties are in agreement that subject-matter of claim 1 differs from document D1 essentially in the features of the last part of the claim starting with "*wherein, once the unloading section (19) ...*" and in that the objective technical problem to be solved is to increase the productivity of the apparatus. Thus, the issue of inventive step primarily hinges on the question of whether or not the teaching of document D1 and the common general knowledge are sufficient to point the skilled person to the claimed solution.
- 3.2 In that respect, the respondent generally submits that it was a straightforward measure to identify waiting times in the process and to reduce them by carrying out the steps of unloading, loading, exposing, pre-loading cassette selection in parallel if necessary. If all the steps were started as soon as possible, which was expressed by the wording "concurrently" in the contested claim, the waiting time would inevitably be reduced and the productivity of the apparatus increased.
- 3.3 The board first refers to column 2, lines 31 to 34 of document D1 according to which it was an object to increase the productivity and efficiency by providing an automated queue management. Document D1 goes on by proposing in particular in column 4, lines 38 to 44, to start the cassette selection by the plate handler (corresponding to the cassette selection assembly in the terminology of the present claim) for the third plate as soon as the picker (corresponding to the plate

feeding assembly) has delivered the second plate to the image recording section:

*"The picker 28 then moves over the positioned cassette, the plate is "picked," and the picker 28 returns to the imaging engine (home) position to deliver the plate. The imaging engine 20 accepts the plate and while the picker is in the engine 20 in the home position, the handler 18 is free to position the cassettes 24 in preparation for the next plate to be imaged."*

The above teaching is equally reflected in claim 4 of document D1:

*"The method according to claim 1, wherein said step of automatically positioning a stack of plates required for the job by the imaging engine can occur during delivery of a previous plate to the imaging engine."*

In view of the above, the board agrees with the respondent in that this aspect of the prior art solution could indeed render obvious the last feature of the present claim that the control assembly causes, when determining that the exchange of cassettes is necessary, the cassette selection assembly to start the cassette selection operation for the third plate, such that the cassette selection operation for the third plate begins before completion of image recording for the second plate.

- 3.4 However, taking into account the detailed wording of the further claim features ("the control assembly (11) obtains, from the image processing device (1), concurrently with the instruction to begin the unloading process for the first plate (P(N-1)) performed by the unloading section (19), control

information associated with a third plate (P(N+1)) for which third plate (P(N+1)) the image recording is to be performed following the second plate (P(N)), and determines whether or not to perform an exchange of cassettes, by comparing control information of the second plate (P(N)) obtained concurrently with the instruction to begin the unloading process for the first plate with the control information of the third plate (P(N+1)), or by comparing control information of the second plate (P(N)) stored in an image buffer (23) with the control information of the third plate (P(N+1))", the board does not share the respondent's view that the subject-matter of claim 1 as a whole would be self-evident in view of document D1 and the common general knowledge.

To that effect, particular reference is made to column 4, lines 11 to 16 of document D1:

*"The front-end 12 sends data to the engine 20 through an interface connection. Typically this data represents a "job" which requires the imaging of plates. This data contains information about the job's requirements, such as the type of plate, its size and plate thickness, the number of plates that are part of the same job, etc."*

It can be inferred that this prior art control assembly is provided with control information relating to a batch of plates belonging to the same job, while in present claim 1, the data are provided for an individual plate and delivered concurrently with the instruction to unload the previous plate. Even if it is not excluded that a job consists of processing only one plate, as submitted by the respondent, document D1 fails to point the skilled person towards the claimed solution of systematically providing control

information for an individual plate and delivering it concurrently with the instruction to unload the previous plate. Moreover, document D1, in particular column 10, lines 61 onwards, does not give any guidance on how to determine the need for an exchange of cassettes. The same is true for the exact timing for processing the control information.

In view of the substantial differences between the solution now claimed and the one known from document D1, the board judges that the skilled person, based on document D1 and the common general knowledge, but without hindsight, would not arrive at the subject-matter of claim 1 of the main request, which is, thus, based on an inventive step, Article 56 EPC 1973.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended with the following version:
  - claims 1 to 7 filed as main request with letter dated 27 May 2016;
  - description: pages 2 and 2A filed at the oral proceedings before the board of appeal;
  - description: pages 3 to 8 of the patent specification;
  - figures 1 to 10 of the patent specification.



3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated