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**Datasheet for the decision
of 7 February 2020**

Case Number: T 2202/15 - 3.2.07

Application Number: 05788705.1

Publication Number: 1784262

IPC: B05B13/04, B41J3/407

Language of the proceedings: EN

Title of invention:

APPARATUS AND METHODS FOR APPLYING IMAGES TO A SURFACE

Patent Proprietor:

The Boeing Company

Opponents:

Airbus Operations GmbH/Airbus Operations S.A.S/
Airbus Operations Ltd./Airbus Operations S.L./
Airbus S.A.S.

Headword:

Relevant legal provisions:

EPC Art. 52, 54, 56

Keyword:

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 2202/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 7 February 2020

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 October 2015 concerning maintenance of the
European Patent No. 1784262 in amended form.**

Composition of the Board:

Chairman	I. Beckedorf
Members:	K. Poalas
	V. Bevilacqua

Summary of Facts and Submissions

- I. The opponents lodged an appeal in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining European patent No. 1 748 262 in amended form according to the patent proprietor's main request.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) and (c) EPC (lack of novelty and lack of inventive step, unallowable amendments).
- III. The opposition division held that claim 1 of the main request meets the requirements of Articles 123(2) and (3) EPC, and that the claimed subject-matter is novel and inventive over the cited prior art documents.
- IV. The opponents requested
- that the decision under appeal be set aside and that the European patent No. 1 784 262 be revoked.
- V. The patent proprietor (respondent) requested as main request
- that the appeal be dismissed.

The auxiliary requests submitted by the patent proprietor are of no relevance for this decision.

- VI. Claim 1 of the main request reads:

"A system (30) for applying a graphic image to a surface, comprising:
an applicator (32) configured to direct a droplet pattern of a pigmented ink of at least one color

towards the surface;
a motivating device (50) coupled to the applicator (32) that is operable to move the applicator (32) in at least one transverse direction relative to the surface and also in a direction perpendicular to the surface;
and
a controller (38) coupled to the motivating device (50) that is configured to receive data corresponding to the graphics image and to control at least the motion of the motivating device (50) to apply the graphic image to the surface,
the motivating device (50) further comprising a first frame (52) and a second frame (54) coupled to the first frame (52), the second frame (54) being spaced apart from the first frame (52) to accommodate the surface therebetween, and at least one vacuum retainer (60) configured to hold the motivating device (50) in proper registration with the surface".

VII. In the present decision reference is made to the following document from the opposition proceedings:

D6 : DE 195 30 242 A1.

VIII. To prepare the oral proceedings scheduled upon all parties' requests, the Board send a communication pursuant to Article 15(1) RPBA 2007. The Board expressed therein its preliminary opinion that the appeal would likely be dismissed. The opponents responded with letter dated 23 January 2020 by submitting arguments on the issues of novelty and inventive step. The patent proprietor did not respond to that communication.

IX. Oral proceedings before the Board took place on 7 February 2020 at the end of which the decision was

announced. For further details reference is made to the minutes thereof.

- X. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. *Claim 1 of the main request - Novelty (Article 54 EPC)*

- 1.1 According to the patent proprietor D6 fails to disclose the following feature of claim 1 of the main request:

"the motivating device (50) further comprising a first frame (52) and a second frame (54) coupled to the first frame (52), the second frame (54) being spaced apart from the first frame (52) to accommodate the surface therebetween"

The opponents argue that this feature is disclosed in figures 2 and 3 of D6.

- 1.2 This line of argument is not convincing. As accepted by the opponents, there exists an ambiguity in the description of D6 in respect of what figures 2 and 3 actually show.

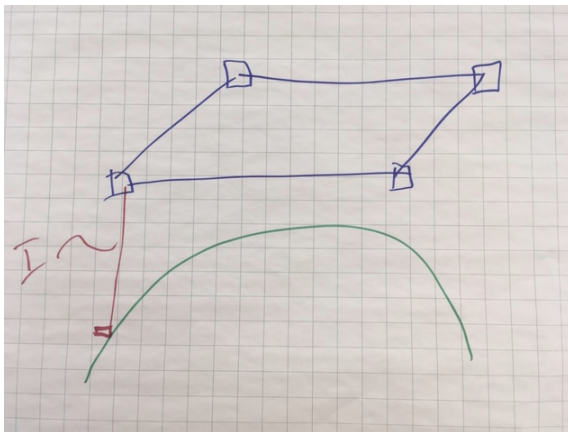
Whereas the description of the figures 2 and 3 in column 6, lines 1 to 4, explicitly labels figure 2 as a second embodiment of the device of D6, figure 3 is specified as a third embodiment of the device.

In contrast thereto it is stated in column 7, lines 13 to 17, that figure 3 shows a side view of the device of figure 2.

This already puts in doubt, at least with regard to the relevant standard for examining novelty, whether there is one clear and unambiguous disclosure of figures 2 and 3 in combination.

- 1.3 Notwithstanding this doubt, the Board is not convinced by the opponents' further argument that also an I-shaped bar can be considered as falling within the general term "frame" used in the patent in suit and especially in claim 1 and that, for this reason D6 discloses two frames as claimed in claim 1 of the patent in suit.

For this, the opponents submit that figure 3 of D6 discloses a system as depicted below, namely a first rectangular frame and a second frame in the form of an I-shaped bar, said second frame being spaced apart from the first frame in order to accommodate the surface to be treated therebetween.



(drawing made by the opponents' professional representative at the oral proceedings before the Board in support of the alleged disclosure of figures 2 and 3 of D6 in combination)

However, even if the person skilled in the art, when reading D6 as a whole, took the statement in column 7,

lines 13 to 17, as the relevant description of figure 3 of D6, as suggested by the opponents, to the effect that figure 3 shows a side view of a guide device of figure 2, he would also learn from the passage in D6 from column 6, line 66, to column 7, line 4, that the device according to figure 2 discloses "a rectangular basic frame 22", *i.e.* a singular frame.

1.4 It follows, that if figure 3 were to show a side view of a guide device of which the guide device of figure 2 is an example, then the guide device of figure 3 also comprises **only one frame**.

1.5 However, looking at figure 3, it is evident that, in fact, no frame is shown in said figure. The fact that no frame 22 is shown in figure 3 makes it unclear, from which side of the guide device of figure 2 figure 3 should be a side view. There is also nothing to indicate that figure 3 is a cross-sectional view. There is none of the usual cross-hatching that would be expected in a cross-sectional view and the description explicitly states that, figure 3 shows a side view.

1.6 To make matters worse, the bridge 21 in figure 3 is orientated at right angles to its orientation in figure 2. This is evident from the fact that movement of the print head 6 along the bridge 21 in figure 3 constitutes movement parallel to the first axis 10 whereas, in figure 2, movement of the print head 6 along the bridge 21 constitutes movement parallel to the second axis 11, at right angles to the first axis 10.

1.7 In view of this above-mentioned discrepancy present between the devices depicted in figures 2 and 3 of D6 in combination with the corresponding parts of the

description it follows that there is no clear and unambiguous disclosure of a first and a second frame in figure 3 of D6, as argued by the patent proprietor, and that thus feature a is not to be found in D6.

1.8 Accordingly, the subject-matter of claim 1 is novel over the disclosure of D6.

2. *Claim 1 of the main request - Inventive step (Article 56 EPC)*

2.1 The opponents argue that the person skilled in the art starting from the embodiment shown in figure 2 of D6 and seeking to make the guide device of figure 2 usable for a curved surface would immediately contemplate through the guide device shown in figure 3 of D6 the provision of a second frame spaced apart from the first frame in order to accommodate the surface to be treated therebetween. By doing so, the person skilled in the art would arrive at subject-matter of claim 1 without the involvement of an inventive activity.

2.2 The Board does not agree for the following reasons.

Firstly, when D6 addresses the problem of treating a curved surface in column 7, lines 13 to 17, it presents at the same time to the person skilled in the art the solution to said problem in the form of providing the print head 6 with the ability of being both movable along the axis B and tiltable at the same time, see column 7, lines 17 to 37.

Therefore, the person skilled in the art seeking to make the guide device of figure 3 usable for a curved surface is instructed by the corresponding teaching in column 7, lines 17 to 37, of D6 to provide the print

head 6 with the ability of being both movable along the axis B and tiltable at the same time. The provision of two frames in order to solve the above-mentioned problem is not mentioned at all in D6.

Secondly, as stated above, there is no clear and unambiguous disclosure in figure 3 of D6 of a first and of a second frame according to claim 1. Accordingly, even a combination of the teachings of figures 2 and 3 of D6 with each other cannot lead the person skilled in the art to the subject-matter of claim 1, since feature a would be still missing.

- 2.3 From the above follows, that subject-matter of claim 1 involves an inventive step.

3. Since the opponents did not convincingly demonstrate the incorrectness of the decision under appeal in respect of the issues of novelty and inventive step of the subject-matter of claim 1 of the main request, the Board finds that the decision under appeal is to be upheld and thus, that the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated