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Datasheet for the decision of 2 June 2022

Case Number: T 2461/17 - 3.2.05

Application Number: 06014084.5

Publication Number: 1743768

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B41F13/00, B41F13/004, B41F13/012, B41F21/10

Language of the proceedings: EN

Title of invention:

Printing press equipped with movable inking unit

Patent Proprietor:

Komori Corporation

Opponent:

KBA-NotaSys SA

Relevant legal provisions:

EPC Art. 69(1), 123(2), 123(3) EPC R. 139

RPBA 2020 Art. 13(1), 13(2)

Keyword:

Amendments - added subject-matter (main request: yes), protection extended (first auxiliary request: yes)

Late-filed request - submitted after summons - taken into account (first auxiliary request: yes, second to fifth auxiliary requests: no)

Decisions cited:

G 0002/88, G 0003/89, G 0001/93, T 0177/08, T 0989/15



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Case Number: T 2461/17 - 3.2.05

DECISION
of Technical Board of Appeal 3.2.05
of 2 June 2022

Appellant: KBA-NotaSys SA

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Representative: Koenig & Bauer AG

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Respondent: Komori Corporation

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Decision under appeal: Interlocutory decision of the Opposition

Division of the European Patent Office posted on 25 August 2017 concerning maintenance of the European Patent No. 1743768 in amended form.

Composition of the Board:

Chairman P. Lanz

Members: T. Vermeulen

A. Bacchin

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Summary of Facts and Submissions

- I. The opponent lodged an appeal against the interlocutory decision of the opposition division finding that European patent No. 1 743 768 as amended on the basis of claim 1 submitted during oral proceedings held on 31 May 2017 met the requirements of the European Patent Convention.
- II. The opposition had been filed against the patent as a whole on the basis of the grounds for opposition under Article 100(a) together with Article 56 EPC (lack of inventive step) and Article 100(c) EPC.
- III. A summons to oral proceedings before the board was issued on 30 April 2021.
- IV. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal in the 2020 version (RPBA 2020), issued on 18 March 2022, the parties were informed of the board's provisional opinion that the amendments made to claim 1 of the request underlying the impugned decision did not comply with Article 123(2) EPC.
- V. With a letter dated 2 May 2022, the respondent (patent proprietor) filed five auxiliary requests.
- VI. Oral proceedings before the board were held on 2 June 2022.
- VII. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

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The respondent requested that the appeal be dismissed (main request) or, alternatively, that the appealed decision be set aside and that the patent be maintained in amended form on the basis of one of the first to fifth auxiliary requests, filed with the letter of 2 May 2022. Alternatively, the respondent requested that the case be remitted to the opposition division.

- VIII. Claim 1 of the main request (corresponding to the request underlying the impugned decision) has the following wording (the feature numbering used by the opposition division appearing in square brackets):
 - "[a] A printing press [b] equipped with a movable inking unit (5A, 5B), comprising: [c] a printing unit (3) for performing multicolor printing; [d] a first drive source (20) for driving said printing unit; [e] a first drive system for drivingly connecting cylinders (7 to 10) of said printing unit to said first drive source; [f] a first cover (27) for covering said first drive system; [q] said movable inking unit (5A, 5B) including a plurality of inking devices (13A, 13B) and being movable to be capable of being thrown on and thrown off said printing unit (3); [h] a second drive system for driving ink rollers of the plurality of inking devices (13A, 13B) of said movable inking unit (5A, 5B); and [i] a second cover (26A, 26B) for covering said second drive system, [j] said printing press further comprising a second drive source (22A, 22B) for driving said ink rollers of the plurality of inking devices (13A, 13B) of said movable inking unit via said second drive system, and $[\mathbf{k}]$ wherein a surface (27a) of said first cover (27) opposing said second cover (26A, 26B) is entirely closed, [1] and a surface (26a, 26b) of said second cover

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(26A, 26B) opposing said first cover (27) is entirely closed; [m] the first cover (27) is annexed to the outer side surfaces of a frame of the printing unit (3) [n] and the second cover (26A, 26B) is annexed to the outer side surfaces of a frame of the movable inking unit (5A, 5B)."

IX. Claim 1 of the first auxiliary request differs from claim 1 of the main request by the following amendments to features ${\bf m}$ and ${\bf n}$:

"[m] characterized in that the first drive system of said printing unit (3) is housed inside the first cover (27) which is annexed to the outer side surfaces of a frame of the printing unit (3) [n] and the second drive system of said movable inking unit (5A, 5B) is housed inside the second cover (26A, 26B) which is annexed to the outer side surfaces of a frame of the movable inking unit (5A, 5B)."

Claim 1 of the second auxiliary request corresponds to claim 1 of the first auxiliary request with the only difference that "first cover (27)" in features \mathbf{f} , \mathbf{k} , \mathbf{l} and \mathbf{m} was replaced by "first frame cover (27)" and that "second cover (26A, 26B)" in features \mathbf{i} , \mathbf{k} , \mathbf{l} and \mathbf{n} was replaced by "second frame cover (26A, 26B)".

Claim 1 of the third, fourth and fifth auxiliary requests builds on claim 1 of the second auxiliary request, with additional features of the dependent claims appended.

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X. The appellant's submissions may be summarised as follows.

Main request - Article 123(2) EPC

In the proceedings before grant, features ${\bf m}$ and ${\bf n}$ were added to claim 1. Paragraph [0027] of the published application was given as the basis for the amendment. However, features \mathbf{m} and \mathbf{n} were only disclosed in that paragraph together with further limitations which did not appear in the claim. By removing the requirement that the gear mechanisms were housed inside the respective covers, the meaning of the original features had changed. The term "housed" was more specific than the "covering" imposed by claim 1 of the main request. The use of the terms in the description as filed must have had a purpose. In fact, as the aim of the covers was to prevent oil leaking, the arrangement of the gear mechanisms inside the covers was closely linked to their attachment to the respective frame of the printing and inking units. The amendments in the form of features \mathbf{m} and \mathbf{n} were therefore inextricably linked with the further limitations in the description; they amounted to unallowable intermediate generalisations.

Furthermore, the change from the singular "surface" in paragraph [0027] of the published application to the plural "surfaces" in both feature \mathbf{m} and feature \mathbf{n} was problematic. The description as filed only mentioned a single outer side surface for the attachment of the cover to the frame of the printing unit. In contrast, the amended claim 1 required the first cover to be annexed to plural outer side surfaces. This was an unallowable extension of the claimed subject-matter. The plural form used in feature \mathbf{n} in connection with

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the inking unit was also without a basis since paragraph [0027] of the published application referred to two separate inking units. For the skilled reader, what was meant by "the outer side surfaces" in the amended claim was clear. For example, the cover could be bent around a corner and be attached to two separate outer side surfaces of a printing unit. It was therefore not evident that an obvious error had occurred. As the amendments had to be in conformity with the description as filed, the respondent's argument regarding the translation of the Japanese priority application was immaterial.

Consequently, the requirements of Article 123(2) EPC were not met.

First auxiliary request - admittance

The first auxiliary request was late-filed and should not be admitted into the proceedings. The appellant had already objected in the statement of grounds of appeal, be it in more general terms, to the omission of "housed" in claim 1. Thus, this being raised by the board in the preliminary opinion could not come as a surprise for the respondent. The amendment of "outer side surfaces", even if this issue was mentioned for the first time by the board, raised further objections. There were no exceptional circumstances justifying the amendment of the respondent's case.

First auxiliary request - Article 123(3) EPC

While claim 1 as granted conferred protection only for a cover attached to plural outer side surfaces of a frame, it was now possible to attach the cover to a single outer side surface of a frame. Depending on how - 6 - T 2461/17

the frame was designed, the arrangement of the cover could therefore differ considerably, in particular since the first auxiliary request also required the drive system to be housed inside the cover. Thus, the scope of protection had been broadened, contrary to the requirements of Article 123(3) EPC.

Both the plural form in the granted claim and the singular form in the claim according to the first auxiliary request had a technical meaning. It was thus not evident that an obvious mistake had occurred. Nevertheless, even for the correction of obvious mistakes, the requirements of Article 123(2) and (3) EPC had to be satisfied.

Second to fifth auxiliary requests - admittance

The second to fifth auxiliary requests were filed late and should not be admitted into the proceedings.

XI. The respondent's submissions were essentially as follows.

Main request - Article 123(2) EPC

The wording of features **m** and **n** was taken literally from paragraph [0027] of the published application. The features of the gear mechanism housed inside a frame cover and the detail of how the cover was connected to the frame were independent from each other. For this reason alone, it was justified to conclude that these features were not closely linked to each other and could be considered separately. Moreover, features **d**, **e** and **f** of claim 1 already explicitly indicated that the first drive system was within the first cover. Similarly, features **h**, **i** and **j** explicitly indicated

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that the second drive system was within the second cover. In view of the purpose of the covers to prevent oil leakage, the term "covering" had to have the meaning that the respective drive systems were enclosed or housed. In this respect, the claim was its own dictionary. Therefore, there was no intermediate generalisation.

In paragraph [0027] of the published application, the plural form "outer side surfaces" was mentioned in connection with the inking units. This was most likely why the plural form was also adopted in the amended claim. This was an obvious mistake. There may have been an error in the translation from the Japanese priority application. Still, it was clear for the skilled person when reading claim 1 of the main request that only one surface was meant both for the printing unit and the inking unit.

The amendments to claim 1 did therefore not contravene the requirements of Article 123(2) EPC.

First auxiliary request - admittance

The opposition division decided that the requirements of Article 123(2) EPC were met for claim 1 of the main request. The respondent could not have foreseen that this would still be contested in appeal proceedings. The board's preliminary opinion issued on 18 March 2022 raised for the first time in the appeal proceedings the objection against the plural form "outer side surfaces". This came as a surprise to the respondent. The first auxiliary request was filed in immediate reaction to this. It should therefore be admitted into the proceedings.

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First auxiliary request - Article 123(3) EPC

In this request, claim 1 was brought into conformity with the disclosure of paragraph [0027] of the published application. Consequently, it was in compliance with Article 123(2) EPC.

The obvious error in claim 1 of the main request was corrected by dropping the plural in both features **m** and **n**. The scope of protection was not extended since annexing a cover at two positions did not really differ from annexing it at one position. Actually, the outside surface of an object could be regarded as referring to all its outside surfaces. The terms were often used as synonyms. The amendment did not therefore imply any structural differences. Besides, the surface of the frame was not specified, so it was technically not relevant and merely concerned a secondary aspect of the invention. Therefore, the correction of the error did not violate Article 123(2) or (3) EPC.

Second to fifth auxiliary requests - admittance

The second to fifth auxiliary requests should be admitted into the proceedings.

Reasons for the Decision

Applicable law

1. The application on which the opposed patent is based was filed on 6 July 2006, i.e. before the entry into force of the EPC 2000. In accordance with the decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the EPC of 29 November 2000 (Article 1(1.) in

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OJ EPO 2007, Special edition No. 4, 219), Article 69 EPC and its Protocol and Article 123 EPC apply in the current case. Accordingly, Rule 139 EPC also applies.

2. The summons to oral proceedings was notified on 30 April 2021. In accordance with Article 25(1) and (3) of the Rules of Procedure of the Boards of Appeal in force from 1 January 2020 (RPBA 2020, see OJ EPO 2021, A35), Article 13(1) and (2) RPBA 2020 apply in the case at hand.

Main request - Article 123(2) EPC

3. Claim 1 of the main request differs from claim 1 as originally filed by, inter alia, features m and n, which were added in the proceedings before grant. It is undisputed that the only passage eligible as a basis for this amendment is the paragraph bridging pages 9 and 10 of the description as originally filed (corresponding to paragraph [0027] of the published application). The passage concerns the detailed description of a first embodiment illustrated in Figures 1 to 4. It reads as follows:

"As shown in Figs. 2 and 3, the gear mechanisms of the inkers 5A, 5B are housed inside frame covers (second covers) 26A, 26B annexed to outer side surfaces of frames 25A, 25B of the inkers 5A, 5B. The gear mechanisms of the printing unit 3 are housed inside a frame cover (first cover) 27 annexed to an outer side surface of a frame (not shown) of the printing unit 3. Opposed surfaces (connecting surfaces) 26a, 26b, 27a of the frame covers 26A, 26B of the inkers 5A, 5B and the frame cover 27 of the printing unit 3 are entirely closed with respect to each other. That is, the plurality

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of gear engagement windows opened and closed with the protective covers 104, as shown in Figs. 8 and 9, are not formed."

4. The appellant argued that the text of the above passage differed from the wording of features **m** and **n** in that it required the gear mechanisms to be "housed inside" the respective frame covers. In contrast, claim 1 at issue merely indicated that the first and second covers were intended "for covering" the respective drive systems.

The board agrees. The respondent's reasoning that the meaning of the term "covering" was confined to "enclosing" or "housing" is not convincing. The verb "to cover" can also be used to mean "to protect, to screen" without the need to enclose or surround the object that is protected. Thus, the wording of claim 1 does not impose any implicit restriction that the drive systems are housed inside the respective covers; it suffices that they are placed behind a protection or a screen. As a result, the subject-matter of the claim is broader than what is disclosed in the above passage of the description as filed. Considering that the second paragraph on page 11 of the description as filed - the only other disclosure of the first and second covers in the detailed description - uses the term "accommodating" in connection with the gear mechanisms, the board is not convinced that the aspect of the drive systems being housed inside the covers is a mere detail devoid of any intricate link to the other features of the embodiment. In the board's view, the way the covers are arranged with respect to the inking and printing units cannot be detached from the structural and functional requirement that they must house the drive systems.

The insertion of features \mathbf{m} and \mathbf{n} into claim 1 of the main request therefore presents the skilled person with technical information that they would not have derived directly and unambiguously from the application as filed.

5. The appellant took issue with a further difference between the above passage of the description as filed and the wording of features m and n. According to the second sentence of the passage, the gear mechanisms of the printing unit are housed inside a frame cover (first cover) annexed to an outer side surface of a frame of the printing unit. In contrast, feature m requires the first cover to be annexed "to the outer side surfaces" (emphasis by the board) of a frame of the printing unit. The board concurs with the appellant that this amendment is discrepant with the description as filed. Joining a cover to an outer side surface of a frame is not the same as joining it to the outer side surfaces of the frame. In fact, the use of the plural not only shifts the meaning of the cover in terms of its attachment to the printing unit but also affects the possible relative position of the drive system arranged behind or housed inside the cover.

Similarly, feature **n** of claim 1 defines the second cover as being annexed to "the outer side surfaces" (emphasis by the board) of a frame of the movable inking unit. The first sentence of the abovecited passage also uses the plural "outer side surfaces" but in direct reference to two inkers or inking units 5A, 5B, which, according to Figure 1 and the third paragraph on page 7 of the description as filed, are located on opposite sides of the printing unit 3. The sentence is therefore understood to mean

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that the first inking unit 5A has a gear mechanism housed inside a frame cover 26A which is annexed to an outer side surface of a frame 25A of the first inking unit, whereas the second inking unit 5B has a gear mechanism housed inside a frame cover 26B which is annexed to an outer side surface of a frame 25B of the second inking unit. Also here, the amendment $\bf n$ to claim 1 is not disclosed in the description as filed.

In the respondent's view, the skilled person would understand claim 1 to mean that only one outer side surface was meant both in the context of the printing unit and the inking unit. The board cannot accept this reasoning. The claim is unequivocal about the use of the plural "the outer side surfaces". None of the other features of the claim touch upon the arrangement of the first and second covers relative to the printing and inking units. Nor does it follow from the claim wording that the frames must take a shape with only one outer side surface.

6. It follows from points 4. and 5. above that by the addition of features **m** and **n**, claim 1 was amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. Hence, the requirements of Article 123(2) EPC are not met.

First auxiliary request - admittance

7. The first auxiliary request was filed after notification of the summons to oral proceedings. It is therefore an amendment to the respondent's appeal case and its admittance is thus governed by Article 13(2) RPBA 2020. As a consequence, the request can only be taken into account if there are exceptional

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circumstances justified with cogent reasons by the respondent. In accordance with the third paragraph of the Explanatory remarks on Article 13(2) RPBA 2020 (see document CA/3/19, section VI, page 43/78 also published in OJ EPO 2020, Supplementary Publication 2, page 60), exceptional circumstances may, for example, arise if the board raised an objection for the first time in a communication.

- 8. The respondent referred to the board's preliminary assessment in point 12 of the communication pursuant to Article 15(1) RPBA 2020 in which the issue of the plural "outer side surfaces" in features \mathbf{m} and \mathbf{n} was raised in the context of Article 123(2) EPC. Although the appellant had objected in point 4 of the statement of grounds of appeal that the amendments to claim 1 of the main request amounted to intermediate generalisations, the reasoning was rather concise and seemed to concern the omission of the gear mechanism housed inside the frame covers instead. In view of this, the board agrees with the respondent that the objection of added subject-matter caused by the use of the plural in "outside surfaces" was raised for the first time in the appeal proceedings in the board's communication.
- 9. For these reasons, the board was satisfied that the circumstances leading to the filing of the first auxiliary request were exceptional and exercised its discretion under Article 13(2) RPBA 2020 to take the request into account.

First auxiliary request - Article 123(2) and (3) EPC

10. A comparison between claim 1 of the first auxiliary request and claim 1 as granted reveals that the

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amendments concern, inter alia, the arrangement of the first and second covers with respect to the printing and inking units. By dropping the plural of "outer side surfaces" in respect of both the first cover and the second cover, features **m** and **n** now read "...annexed to the outer side surface of a frame of the printing unit (3)" and "...annexed to the outer side surface of a frame of the movable inking unit (5A, 5B)", respectively. This raises the question of whether the amendments contravene Article 123(3) EPC.

- 11. First and foremost, the purpose of Article 123(3) EPC is to protect the interests of third parties by prohibiting any broadening of the claims of a granted patent, even if there should be a basis for such broadening in the application as filed (G 1/93, OJ EPO 1994, 541, reasons 9). The mere fact that the passage of the detailed description cited in point 3. above uses the singular "outer side surface" in connection with the printing unit and the plural "outer side surfaces" in connection with two different inking units which arguably provides a basis for deleting the plural "s" in "outer side surfaces" of granted claim 1 does not mean that this broadening must not be prohibited.
- 12. In accordance with decision G 2/88 (OJ EPO 1990, 93, reasons 3.2, 3.3 and 4), when assessing compliance with Article 123(3) EPC, it is the totality of the claims before amendment in comparison with the totality of the claims after the proposed amendment that has to be considered. In doing so, Article 69(1) EPC and its Protocol are to be applied to determine the protection which is conferred by the patent.

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12.1 Article 69(1), first sentence, EPC lays down the principle that the extent of the protection conferred by a European patent shall be determined by the claims.

The board agrees with the appellant that, unlike claim 1 as granted, claim 1 of the first auxiliary request confers protection for solutions annexing one or both of the first and second covers only to a single outer side surface of the corresponding frame. Claim 1 of the first auxiliary request thus includes within its scope both the case in which each of the covers are annexed to a single outer side surface and the case in which both covers are annexed to more than one outer side surfaces. Intermediate solutions annexing only one of the covers to more than one outer side surfaces are also encompassed. The change of the plural "surfaces" to the singular "surface" has therefore the effect that some embodiments fall within the scope of claim 1 of the first auxiliary request, which did not fall within the scope of claim 1 as granted. This leads the board to conclude that the claimed subject-matter has shifted in such a way that the protection conferred by claim 1 as granted is extended.

The further amendments in features **m** and **n** of claim 1 of the auxiliary request do not alter this conclusion. Restricting the drive systems to a position "housed inside" the respective covers does not necessarily affect the way in which the covers are annexed to a frame of the printing or inking unit, at least not to a degree that would require each cover to be annexed to more than one outer side surface.

12.2 Article 69(1), second sentence, stipulates that the description and drawings are to be used to interpret the claims. Accordingly, Article 1, third sentence, of

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the Protocol on the Interpretation of Article 69 EPC expresses the principle that when interpreting Article 69 EPC a position between two extremes, i.e. the strict, literal meaning of the wording used in the claims or the consideration of the description and drawings by the person skilled in the art, should be found, so as to combine a fair protection for the patent proprietor with a reasonable degree of legal certainty for third parties.

In the current case, however, annexing a cover to the outer side surfaces of a frame of a printing or inking unit is a perfectly understandable, technically meaningful feature of claim 1 as granted. It reflects the condition that the cover should be attached to those surfaces of the frame situated at its sides. The limiting feature is therefore clear in itself and does not pose any problems when determining the extent of protection conferred by the claim in its granted version. In this regard, the board agrees with T 177/08 (reasons 3.3) that when determining whether the protection conferred by a granted claim is extended, an unambiguous and generally accepted definition of a term figuring in the claims should not be superseded by a different meaning found in the description.

- 13. The respondent argued that the scope of protection was not extended since annexing a cover at two positions did not really differ from annexing it at one position. The board is not convinced by this argument. Attaching a cover to the left and right side surfaces of a frame is not the same as attaching it only to the left side surface. They are quite different technical solutions.
- 14. Furthermore, the argument was brought forward that by not specifying in the claim which surface of the frame

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was meant, the feature of the covers being annexed to the outer side surfaces of a frame was technically not relevant and merely concerned a secondary aspect of the invention.

This argument is understood as referring to "an added undisclosed feature without any technical meaning" mentioned by the Enlarged Board in point 4 of the reasons of decision G 1/93 (ibid.) as one of three instances where a patent could be maintained, upon deletion of such added feature, despite the "inescapable trap" of Article 123(2) EPC in combination with Article 123(3) EPC (see also "Case Law of the Boards of Appeal of the EPO", 9th edition, July 2019, II.E.3.2). However, as explained in points 12.2 and 13. above, the disputed feature of claim 1 as granted has a clear technical meaning. Consequently, the exception provided for in decision G 1/93 does not apply in the case at issue.

15. It was also suggested by the respondent that dropping the plural "-s" from "outer side surfaces" of claim 1 as granted would just amount to the correction of an obvious error.

The board wishes to point out that Article 123 EPC does not distinguish between amendments due to corrections and other amendments, so it also covers amendments for corrections (G 3/89, OJ EPO 1993, 117, reasons 1.3). This follows from the fact that a correction of an obvious error in the description, claims or drawings is of a strictly declaratory nature (G 3/89, reasons 4). Consequently, the prohibition of extension of protection enshrined in Article 123(3) EPC also applies to the correction of an error. For this reason alone, the respondent's reasoning must fail.

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In opinion G 3/89, the Enlarged Board further ruled that for a correction in the description, the claims or the drawings to be allowable under Rule 139, second sentence, EPC, it must be established that it is obvious that an error is in fact present and that the correction of the error is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction (G 3/89, reasons 5 and 6). For the reasons set out above, the board shares the appellant's view that the use of the plural "outer side surfaces" in claim 1 as granted makes perfect technical sense and thus does not qualify as an obvious error. Even if it were, the respondent has not convinced the board that nothing else was intended than what they offered as the correction in the first auxiliary request.

16. Having regard to the above considerations, the board concludes that the claim 1 of the first auxiliary request amends the patent in such a way as to extend the protection it confers. The requirements of Article 123(3) EPC are not met.

Second to fifth auxiliary request - admittance

- 17. The second, third, fourth and fifth auxiliary requests were also filed after notification of the summons to oral proceedings. As with the first auxiliary request, their admittance is therefore governed by Article 13(2) RPBA 2020.
- 18. In accordance with the fourth paragraph of the Explanatory remarks on Article 13(2) RPBA 2020 (ibid.), the boards of appeal may also rely on criteria as set out in Article 13(1) RPBA 2020 when deciding, in the

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exercise of their discretion in accordance with Article 13(2) RPBA 2020, whether to admit an amendment made at this stage of the proceedings (see also T 989/15, reasons 16.2). One of the criteria set out in Article 13(1) RPBA 2020 is, in the case of an amendment to a patent application or patent, whether the party has demonstrated that any such amendment, prima facie, overcomes the issues raised by another party in the appeal proceedings or by the board and does not give rise to new objections.

- 19. Claim 1 of each of the second, third, fourth and fifth auxiliary requests contains the features "...annexed to the outer side surface of a frame of the printing unit (3)" and "...annexed to the outer side surface of a frame of the movable inking unit (5A, 5B)" which were already under dispute in claim 1 of the first auxiliary request. At first glance, these amendments thus also contravene Article 123(3) EPC. The respondent has not convincingly demonstrated how the objection of extension of the scope of protection is overcome by the further amendments in the second to fifth auxiliary requests, nor is it apparent to the board that this is the case.
- 20. For these reasons, the board exercised its discretion under Article 13(2) RPBA 2020 not to take into account the second, third, fourth and fifth auxiliary requests.

Conclusion

21. As no allowable request is on file, the patent must be revoked.

Order

For these reasons it is decided that:

- 1. The decision under appeal is set aside.
- 2. The patent is revoked.

The Registrar:

The Chairman:



N. Schneider P. Lanz

Decision electronically authenticated