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**Datasheet for the decision
of 8 April 2022**

Case Number: T 2849/18 - 3.4.03

Application Number: 11778206.0

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Language of the proceedings: EN

Title of invention:
INTERACTIVE COLOR CENTER DISPLAY APPARATUS

Applicant:
Behr Process Corporation

Headword:

Relevant legal provisions:
EPC Art. 52(1), 52(2)(d), 56
RPBA 2020 Art. 13(2)

Keyword:

Inventive step - mixture of technical and non-technical features - presentation of information - main request (no) - auxiliary requests 1 to 3 (no)
Amendment after summons - exceptional circumstances (no) - cogent reasons (no) - auxiliary request 4 admitted (no)

Decisions cited:

G 0001/19, G 0003/08, T 0641/00, T 1670/07, T 2429/17

Catchword:



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Case Number: T 2849/18 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 8 April 2022

Appellant: Behr Process Corporation
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 13 July 2018
refusing European patent application No.
11778206.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Häusser
Members: A. Böhm-Pélissier
D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 11 778 206. The refusal was based on the ground of lack of inventive step (Article 56 EPC) over document D1 in combination with common general knowledge.
- II. **Reference** is made to the following documents:
- D1 = US 2006/0001677 A1
D7 = US 2006/0131250 A1
- III. The Appellant **requests** that the decision under appeal be set aside and that a patent be granted based on the claims of the Main Request or of Auxiliary Requests 1 or 2, all submitted by letter dated 8 March 2022, or of Auxiliary Requests 3 or 4, also submitted by letter dated 8 March 2022 but in the amended form according to Auxiliary Requests 3 or 4 submitted by letter dated 6 April 2022.
- IV. **Claim 1** according to the **Main Request** (labelling (A), (B), ... introduced by the Board):
- (A) Display apparatus comprising:
(B) a sample card display comprising an array of coded paint sample cards;
(C) a card reading video station positioned in said sample card display, the card reading video station having a touch sensitive visual [sic],

(D) the card reading video station being configured to read a code present on a coded paint sample card from the sample card display;

(E) a computer configured to control said video station and to cause display on said touch sensitive visual display of a color present on a said coded paint sample card in response to reading of said code and responsive to user selection to thereafter present a sequence of display screens on said visual display, wherein said display screens comprise:

(F) a first display screen displaying an image of a room with said color applied to a selected area of the room image through a plurality of touch-select operations performed with respect to said first display screen and displaying a plurality of additional colors;

(H) and a second display screen displaying an image of the paint sample card array and a pinpoint location in the image of a paint sample card bearing a selected color from the plurality of additional colors.

Claim 1 of **Auxiliary Request 1** differs from claim 1 of the Main Request in that Feature (G') is added and Feature (H) is replaced by Feature (H') (underlining for additions, ~~striking through~~ for deletions with respect to claim 1 of the Main Request):

(G') the plurality of additional colors including at least one coordinating color for said color;

(H') and a second display screen ~~displaying~~ operable to display an image of the paint sample card array and a pinpoint location in the image of a paint sample card bearing a selected color from the plurality of additional colors.

Claim 1 of **Auxiliary Request 2** differs from claim 1 of Auxiliary Request 1 in that Features (F), (G') and (H') are replaced by Features (F''), (G'') and (H'') (highlighting with respect to Auxiliary Request 1):

(F'') a first display screen displaying an image of a room with said color and at least one additional color applied to ~~a selected area~~ areas of the room image through a plurality of touch-select operations performed with respect to said first display screen ~~and displaying a plurality of additional colors;~~

(G'') the ~~plurality of~~ at least one additional colors including at least one coordinating color for said color;

(H'') and a second display screen operable to display an image of the paint sample card array and a pinpoint location in the image of a paint sample card bearing a selected color from the ~~plurality of~~ at least one additional colors.

Claim 1 of **Auxiliary Request 3** differs from claim 1 of Auxiliary Request 2 (highlighting with respect to Auxiliary Request 2) in that "touch sensitive visual" in Feature (C) is amended to "touch sensitive visual display", "coded paint sample card" in Features (D) and (E) is amended to "first coded paint sample card", and Features (G'') and (H'') are replaced by Features (G''') and (H'''):

(G''') the at least one additional color including at least one coordinating color for ~~said color;~~ the colour from the first coded paint sample card;

(H''') and a second display screen operable to display an image of the paint sample card array including the position within the sample card display of the coded paint sample cards and a pinpoint location in the image

of a paint sample card bearing a selected color from the at least one additional color. thereby enabling a user to locate the coded paint sample card of the selected colour as well as the first coded paint sample card.

Claim 1 of **Auxiliary Request 4** differs from claim 1 of Auxiliary Request 3 in that Feature (H'') is replaced by Feature (H''') (highlighting with respect to the Auxiliary Request 3):

(H''') and a second display screen operable to display an image of the paint sample card array including the position within the sample card display of the coded paint sample cards and a pinpoint location in the image of identified by a solid highlighted rectangle area or a highlighted border around a paint sample card bearing a selected color from the at least one additional color thereby enabling a user to locate the manually manipulable coded paint sample card of the selected colour as well as the first coded paint sample card.

V. The Appellant argued essentially as follows:

- (a) The subject-matter of claim 1 of the Main Request differed from the disclosure of D1 in that D1 neither explicitly nor implicitly disclosed a paint card display array (part of Features (B) to (D)) or Feature (H).
- (b) Although Feature (H) concerned displaying information, it had the technical effect of facilitating a paint card to be retrieved. Nothing in the prior art suggested Feature (H). The subject-matter of claim 1 of the Main Request was therefore novel and inventive over D1 and D7.
- (c) The same reasoning could be applied to Auxiliary Requests 1 to 3.

(d) New Auxiliary Request 4 should be admitted under Article 13 (2) RPBA 2020, because it addressed a new objection in the communication under Article 15 (1) RPBA 2020, i.e. that the term "pinpoint" was ambiguous and broad.

Reasons for the Decision

1. The invention as claimed

1.1 The invention concerns a self-service terminal in a store selling paints of different colours. At such a terminal the customer can initiate a session using a paint sample card from a paint card display. The paint card represents a specific paint/colour and provides the terminal with information in order to create a session. The session simulates painting a chosen environment (e.g. a dining room) with the chosen paint/colour.

1.2 The alleged aim of the invention is to present, advertise and promote paint and other coating products in a retail environment and to provide product information to consumers and others (see page 1, second paragraph, of the application). This is e.g. achieved in that the colour application program suggests an additional colour coordinating with the selected colour. The location of the paint card (corresponding to the additional colour) in a paint card display is illustrated ("pinpointed") in an image of the paint card display array.

2. Main Request - Inventive Step

2.1 Closest Prior Art

The Board agrees with the Examining Division and with the Appellant in that D1 is the closest prior art because it also relates to simulating paintings in a virtual environment. D7 discloses a terminal for displaying paint cards (see below).

2.2 D1, D7

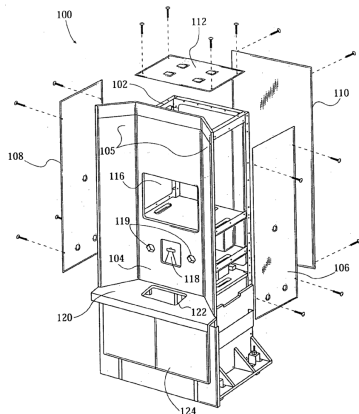


Fig. 1

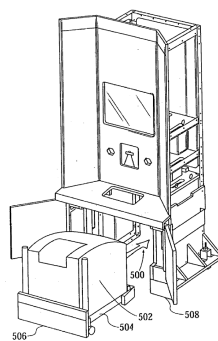


Fig. 5

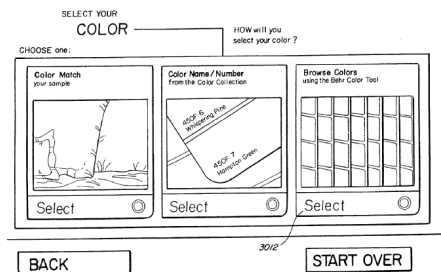


FIG 26

D1

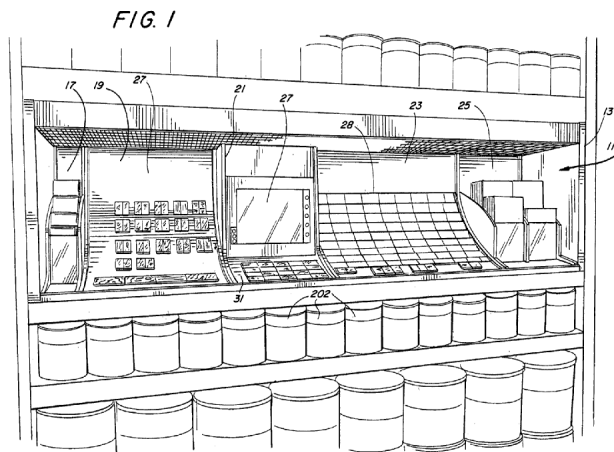


Fig. 1 of D7

2.2.1 In D1 a coded sample colour paint card is described as a "fabric or paint chip" mentioned e.g. in paragraph [0128]. D1 further discloses a colour card reader, where the colour is input via the "paint chip" card and the corresponding colour code is retrieved via a colour database. D1 does not explicitly disclose that the paint chips are stored in a "card display" device,

where the cards are exposed and made available to the customers. Such a display is shown in D7 (paint chip panels 27, 28, 31, paragraphs [0048], [0049]).

2.2.2 D1, Fig. 26 shows two cards and therefore at least a part of a "colour card display". However, D1 does not disclose displaying on the screen the paint card position in a card display.

2.2.3 D1 discloses ([0090]) a simulation of a selected colour for a specific room either provided by the terminal or provided by the customer via a picture of a room. D1 discloses the selection of another colour via a colour palette and a program suggesting a colour coordinating with the initially selected colour ([0120]).

2.3 Differences

2.3.1 D1 therefore discloses (references with respect to D1, claim wording of present claim 1)

- (A) Display apparatus comprising:
- (B) a ~~sample card display~~ device comprising ~~an array of~~ coded paint sample cards ("paint chips", [0128]);
- (C) a card reading video station (scanner for reading the paint chip, [0128]) ~~positioned in said sample card display~~, the card reading video station having a touch sensitive visual [display] (touch screen, [0066]),
- (D) the card reading video station being configured to read a code present on a coded paint sample card (using the scanner for reading the paint chip, [0128]) ~~from the sample card display~~;
- (E) a computer (220, [0058], Fig. 2) configured to control said video station and to cause display on said touch sensitive visual display of a color present on a said coded paint sample card in response to reading of said code (e.g. Fig. 26, "450F 6") and responsive to

user selection (see Figs. 26-29, "pitch card" and corresponding colour code, the code can also be entered directly by the customer or be chosen from a displayed table of different colours, cf. [0208]-[0212]) to thereafter present a sequence of display screens (Figs. 26-56) on said visual display, wherein said display screens comprise:

(F) a first display screen (Fig. 50) displaying an image of a room with said color applied to a selected area of the room image through a plurality of touch-select operations performed with respect to said first display screen ([0090], [0091]) and displaying a plurality of additional colors (e.g. screen 3013 in Fig. 27, Figs. 30-43, 56);

(H) and a second display screen displaying an image of (a part of) the a paint sample card array (Fig. 26 shows two paint cards) and an pinpoint location in the image of a paint sample card bearing a selected color from the plurality of additional colors.

2.3.2 D1 does not disclose

(a) a paint sample card display device for displaying an array of coded paint sample cards (parts of Features (B), (C), and (D)) and

(b) a pinpoint location in the image of a paint sample card bearing a selected color from the plurality of additional colors (Feature (H)).

2.4 Technical effect

2.4.1 Feature (a) has the technical effect of storing and displaying the paint sample cards.

2.4.2 The effect of distinguishing Feature (b) is that the customer can easily and intuitively retrieve a paint sample card in the display panel by indication of the

place of the card in a scheme representing the whole array of paint sample cards.

2.4.3 The Appellant has argued that Feature (b) had a technical effect, because the display array was a technical entity and retrieving a paint sample card was a technical process. The Appellant defined the skilled person as an engineer having skills in both mechanical engineering and software development. Its technical task was to enable the user to locate easily the paint sample card in the paint sample card display.

2.4.4 The Board however is of the opinion that displaying the information, where the paint card is located, refers to presentation of information (see Article 52(2)(d) EPC) as brought forward by the Examining Division in the summons to oral proceedings and in the impugned decision. Non-technical features within the meaning of Article 52(2)(d) EPC, i.e. features related to presentation of information, are allowed in the context of other technical features, but cannot contribute to inventive step. These features can thus be included into the formulation of the technical problem (see, *inter alia*, G 1/19 [reasons 31], T 0641/00 [[headnote], G 3/08; *Case Law of the Boards of Appeal of the EPO*, 9th edition 2019, sections I.D.9.1.2 to 9.1.4). Therefore, the aim to be achieved may legitimately appear in the formulation of the problem as part of the framework of the technical problem. Therefore, Feature (H) ("pinpointing") can be included into the task formulation as a framework condition to be fulfilled.

2.4.5 Furthermore, claim 1 merely relates to an apparatus suitable for enabling the retrieval of a paint card by the user but does not imply technical means for the retrieval and further processing of the paint sample

card. If the user does not pick up the paint card the step of locating and retrieving the paint card is not executed. Therefore, the technical chain (cf. T 1670/07) of achieving the alleged technical effect is broken.

2.5 Objective technical problem

The problem therefore may be defined as providing an easily usable storage device for the paint cards and implementing an image of the paint sample card array pinpointing the location in the image of a paint sample card.

2.6 Obviousness

- 2.6.1 Providing a display array for paint cards as taught by D7 (Fig. 1) is the most obvious way to present paint sample cards in order to make the cards both easily accessibly and visible.
- 2.6.2 The solution to the second part of the problem directly results from the problem formulation itself. No technical difficulties would be encountered by the skilled person having skills in software development. Hence, the implementation of an image of the paint sample card array pinpointing the location in the image of a paint sample card does not require any inventive skills and would be obvious for the skilled person.
- 2.6.3 In view of the above the subject-matter of claim 1 of the Main Request does not involve an inventive step (Articles 52(1) and 56 EPC).

3. **Auxiliary Requests 1 to 3 - Inventive Step**

3.1 **Difference**

D1 discloses in paragraphs [0209], [0290] and Figs. 26 and 55 the additional features of amended Features (F) and (G) of claim 1 of **Auxiliary Requests 1 to 3**. The second part of Feature (H''') merely corresponds to part of the problem to be solved, i.e. enabling a user to locate the selected or suggested paint card.

3.2 **Effect - Problem - Obviousness**

3.2.1 Since the additional features of Auxiliary Requests 1 to 3 are either disclosed in D1 or correspond to part of the problem to be solved, the same reasoning applies as discussed above.

3.2.2 Therefore the subject-matter of claim 1 of Auxiliary Requests 1 to 3 does not involve an inventive step, either (Articles 52(1) and 56 EPC).

4. **Auxiliary Request 4 - Admission under Article 13(2) RPBA 2020**

4.1 Auxiliary Request 4 was submitted in reply to the communication under Article 15 (1) RPBA 2020. Therefore exceptional circumstances justified by cogent reasons have to be brought forward to justify the late filing of this new request (Article 13(2) RPBA 2020). The Appellant argued that new objections were raised in said communication, in particular that the Board had commented that the expression "pinpoint" was ambiguous and rather broad.

4.2 The Board came to the conclusion that said comment in section 3.7.3 of said communication was solely an additional remark as to the scope of Feature (H) and does not represent a new objection. In particular, no new objection under Article 84 or 123(2) EPC was raised for the first time as it was the case in T 2429/17 cited by the Appellant. In this case the Board took note that claim 1 had been filed to address issues raised for the first time by the Board and therefore recognised "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020; the new requests were finally not admitted, because the amendments created other new objections (Reasons 2.4 to 2.6).

4.3 In the present case the objection under Article 56 EPC with respect to D1 and in particular in relation to Feature (H) was discussed during the entire examination proceedings. Evaluating in a communication under Article 15 (1) RPBA 2020 the scope of a feature or a term within the same context, namely the discussion of obviousness over document D1, cannot be considered as a cogent reason or exceptional circumstances under Article 13(2) RPBA 2020 justifying new submissions.

4.4 Therefore, new Auxiliary Request 4 is not admitted into the proceedings (Article 13(2) RPBA 2020).

5. Conclusions

Since the submitted requests either do not meet the requirements of the EPC or cannot be admitted under Article 13(2) RPBA 2020, the examining division's decision to refuse the application is confirmed. Consequently, the appeal has to be dismissed (Articles 97(2) and 111(1) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated