Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 3 September 2024

Case Number: T 0445/22 - 3.2.05

Application Number: 14777776.7

Publication Number: 3022142

IPC: B65H26/06

Language of the proceedings: EN

Title of invention:
Assembly for feeding backing ribbon for labeling products to be labeled

Patent Proprietor:
SACMI BEVERAGE VERONA S.R.L.

Opponent:
Sidel Participations

Relevant legal provisions:
EPC Art. 54(1), 56, 64(2), 100(a), 100(c), 111(1)
RPBA 2020 Art. 11, 12(4), 13(2)

Keyword:

Late-filed objection - admitted (yes)
Added subject-matter - (main request: no)
Late-filed document - admitted (yes)
Novelty - (main request: yes)
Inventive step - (main request, auxiliary request 1: no)
Remittal to opposition division - (yes)

Decisions cited:

G 0002/88, G 0003/14, T 0049/11

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

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

Case Number: T 0445/22 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 3 September 2024

Appellant: (Opponent)	Sidel Participations Avenue de la Patrouille de France 76930 Octeville Sur Mer (FR)
Representative:	Müller Schupfner & Partner Patent- und Rechtsanwaltspartnerschaft mbB (Muc) Bavariaring 11 80336 München (DE)
Respondent: (Patent Proprietor)	SACMI BEVERAGE VERONA S.R.L. Via Selice Provinciale, 17/A 40026 Imola (Bologna)(IT)
Representative:	Micaela Nadia Modiano Modiano & Partners Via Meravigli, 16 20123 Milano (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 16 December 2021 rejecting the opposition filed against European patent No. 3022142 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	T. Vermeulen
Members:	O. Randl
	A. Bacchin

Summary of Facts and Submissions

I. The opponent filed an appeal against the opposition division's decision to reject the opposition against European patent No. 3 022 142 ("the patent").

II. Among the documents taken into account by the opposition division, the following documents are relevant to the appeal proceedings:

D1 WO 2007/009585 A1 D2 US 2008/196819 A1
D3 US 4,417,940 D4 JP 2002-80150 A

Together with its statement of grounds of appeal, the appellant filed the following documents:

D10 US 7,138,033 B2 D11 JP 2005-292427 A
D12 machine translation of document D11

III. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) issued on 9 July 2024, the parties were informed of the board's provisional opinion on the issues of the case.

IV. Oral proceedings before the board took place on 3 September 2024.

V. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The appellant further requested that the board admit documents D10 and D11 into the proceedings and not admit auxiliary requests 4 to 7.

VI. The respondent (patent proprietor) requested that the appeal be dismissed (main request), or that the decision under appeal be set aside and that the patent be maintained in amended form, on the basis of the claims of one of auxiliary requests 1 to 7 filed with the reply to the statement of grounds of appeal.

The respondent also requested that documents D10 and D11 not be admitted.

VII. Claim 1 of the patent as granted (main request) reads (the feature references used by the board have been added in square brackets):

"[**0**] Method for feeding backing ribbon (2) for adhesive labels for labeling [sic] products to be labeled [sic], characterized in that it comprises the following step:
[**1**] providing a splicing device (4) and at least two supporting elements (5a, 5b) for said backing ribbon (2);
[**2**] performing on command the splice between a first splicing region (6), formed on a first backing ribbon (2a) being unwound from a first supporting element (5a), and a second splicing region (7), formed on a second backing ribbon (2b) wound on a second supporting element (5b), [**3**] said first backing ribbon (2a) supporting a plurality of adhesive labels (8) which are arranged, mutually spaced, on the face (11) directed toward said second splicing region (7), [**4**] said first backing ribbon (2a) having, when it is associated with the respective supporting element (5a), at least one portion (13) that is free from self-adhesive labels (8) and forms said first splicing region (6), [**5**] said at least one portion (13) being located substantially at the end of said first backing ribbon (2a) that is associated with said first supporting element (5a)."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request by the following additional feature: "[**6**] said second splicing region (7) comprising a double-adhesive sheet-like element (7a), which is associated with the free end of said second backing ribbon (2b) and is arranged so as to face said first splicing region (6) during splicing operations".

Claim 1 of auxiliary request 2 differs from claim 1 of the main request by the following additional features: "[**7**] associating functionally said feeder assembly (1) with a device for detecting a parameter related to the first backing ribbon (2a) that is unwound from said first supporting element (5a), said detection device being adapted to control, once said parameter has been detected, said splicing device (4);
[**8**] detecting said portion (13) of said first ribbon (2a) that is free from adhesive labels (8) with said detection device".

VIII. The relevant submissions of the parties can be summarised as follows:

(a) Article 100(c) EPC

(i) Appellant (opponent)

The subject-matter of claim 1 as granted extends beyond the content of the originally disclosed documents and therefore contravenes Article 123(2) EPC. Claim 1 as originally filed concerned an apparatus for providing a spliced ribbon, whereas claim 1 as granted defines a method of using the apparatus to perform the splicing process. In view of Article 64(2) EPC, the amended set of claims protects not only the method but also the

product directly obtained by the method. There is no basis for the new claim category in the application as filed. It was not the object of the alleged invention to create a specific spliced ribbon made from two ribbons. The purpose of the apparatus is to accelerate and simplify the splicing process. The description does not discuss the kind of spliced ribbon created from two ribbons or its benefits. Thus, the spliced ribbon being obtained via the splicing process is not part of the content of the original application. The opposition division did not explain why decision T 49/11 is applicable, nor whether the description includes the product resulting from the splicing process. The decision under appeal is based on a wrong reference and defective reasoning in light of decision T 49/11.

Moreover, the deletion of the words "said splicing device (4) being intended to" from the original claim results in a violation of Article 123(2) EPC. This objection was triggered by the board's provisional conclusion that manual splicing is encompassed by claim 1 (see point 6.2 of the communication under Article 15(1) RPBA). Manual splicing is not part of the disclosure of the application as filed, which exclusively considers the use of a splicing device (see page 3, lines 19 to 24; page 5, lines 18 to 21; page 7, lines 2 to 8).

(ii) Respondent (patent proprietor)

Article 123(2) EPC has not been violated by the change of claim category. The spliced ribbon is the necessary result of the splicing as described and claimed in the original application and it is also depicted in Fig. 2 thereof. Thus, the original application also provides a clear and unambiguous basis for said product. Decision

G 2/88 does not refer to the introduction of added subject-matter. Moreover, this decision deals with a change from a compound to a use thereof. Decision T 49/11 confirms that G 2/88 is not relevant in the context of Article 123(2) EPC. The fact that it was not the purpose of the invention to create a specific spliced ribbon is not relevant, either. Since the alleged added subject-matter is the spliced ribbon, the relevant disclosure in the original application is the disclosure of the product, not of an object or a purpose. The fact that neither the kind of spliced ribbon nor its benefits are disclosed in the application is also irrelevant. A product resulting from a claimed method does not necessarily have to be inventive or advantageous or to have a special purpose.

The appellant's second objection constitutes a change of its appeal case in the sense of Article 13(2) RPBA and should not be admitted. Moreover, it is clear that in claim 1 the step of performing the splice is carried out using the splicing device mentioned in the first step. The expression "on command" should be interpreted in this context and thus has a basis in the application as originally filed.

(b) Article 100(a) EPC: novelty over document D1/D2

(i) Appellant (opponent)

Document D1 discloses all features of claim 1. In its provisional opinion, the board reached the conclusion that "at least feature 4" was not disclosed in document D1. It is undisputed that in document D1 labels are automatically removed when the end of the ribbon is detected by sensor 23 (see page 14, line 1). Then the knife block (*Messerblock*) 21 is activated and cuts off

the ribbon behind the point where the label was removed. Thus there is a section that is free from self-adhesive labels. The board was of the opinion that the fact that the end is approaching (D1, page 14, line 1: "das herannahende Ende") means that it is no longer associated with the respective supporting element. This conclusion is unwarranted. Document D1 is all about obtaining a well-defined cutting edge at a defined location (see page 4, second paragraph and page 3, line 33, to page 4, line 2). This requires the ribbon not to be loose. The ribbon can be tensioned by means of the braking effect of the supply roll. The pressure roller 16 alone is not sufficient to guarantee the "sharp redirection" mentioned on page 10, lines 8 to 11. The sensor is described on page 6, third paragraph, where it is said that the sensor can determine when the ribbon will be used up. This does not require the ribbon to be detached from its roll (see e.g. document D3, Fig. 1). The contrary cannot be derived from a comparison of Figs. 1 and 2 of document D1, because they are only schematic drawings. Thus the document discloses features 4 and 5.

(ii) Respondent (patent proprietor)

It is necessary to draw a distinction between the disclosure of the general description of the invention and the description of the particular embodiments. In the detailed description of Fig. 1 of document D1, it is clear that a case is described where the sensor detects that the free end is approaching, contrary to feature 4 of claim 1. Further confirmation is found on page 17, point 11, of document D1, where the sensor is stated to detect the absolute end of the tape. A comparison of Fig. 1 and Fig. 2 confirms this understanding (see the vertical position of reference number 2).

Moreover, the combination of rollers 6 and 16 is sufficient to create the tension needed for the cut (see page 14, lines 22 and 23).

(c) Article 100(a) EPC: novelty over document D3

(i) Appellant (opponent)

Document D3 discloses all the features of claim 1. The opposition division's conclusion that features 3 and 5 are not disclosed is not correct. The first backing ribbon S2 is at least partially unwound when roll 35 is prepared for the splicing process attaching the ribbon to the second backing ribbon of the primary roll 14. During installation, the supplement roll 35 needs to be unwound at least partially to transfer the leader 39 to the splicing region. Claim 1 does not specify the moment of unwinding. The term "that" in feature 5 can be understood to refer to the "said first backing ribbon". In this case, the label-free portion does not need to be located at the end of the first backing region attached to the support. It could also be provided at the leading end 39 of the ribbon.

(ii) Respondent (patent proprietor)

The appellant's interpretation of feature 2 ignores the use of the verbal form "being unwound". The continuous tense is used to describe an action that is happening at the moment and is progressive in time. Moreover, the appellant wrongly interprets the significance of "first" and "second backing ribbon" in claim 1: "first" clearly refers to the old ribbon, which is going to run out, while "second" refers to the "new" ribbon that is spliced to the old one. In document D3, the "first backing ribbon" of Figure 1 is S1 (col. 4, lines 42

to 52) and not S2. The labels of the first ribbon 14 are not on the face directed to the second splicing region. Ribbon S2 of Figure 1 of document D3 could also not be the first backing ribbon as claimed because the "first splicing region" would not be at the end of ribbon S2 that is associated with the central support of roll 35 (i.e. the trailing end) but would be at its leading end, which is not what feature 5 requires. In feature 5, the pronoun "that" is clearly used to identify which of the two possible ends is referred to. Although document D3 discloses a primary label-bearing strip with a "label-free tail" (col. 1, lines 19 to 38), the invention is explicitly aimed at avoiding the use of such non-standard tape (col. 5, line 37 and 53 to 58). The embodiment of document D3 considered by the opposition division cannot disclose feature 4 at least because the special tape with a label-free tail mentioned at the beginning of document D3 is not used. Thus document D3 does not disclose features 3, 4 and 5.

(d) Article 100(a) EPC: novelty over document D4

(i) Appellant (opponent)

The opposition division incorrectly concluded that the feature of the performing on command the splice, i.e. by itself as a reaction to an external signal, would exclude the disclosure of document D4 as novelty destroying, since it only discusses a manual splicing process. However, this feature is no part of granted claim 1. Even if the splicing process is performed manually, a splicing device is used. Any element or component being suitable to perform or support the splicing process is a splicing device in line with the wording of granted claim 1. Consequently, the adhesive element 9 of document D4 qualifies as a splicing device

as per granted claim 1. The operator will identify the current status of a preceding ribbon and, in reaction to this status and information, prepare and perform the splicing process for continuing the labelling mechanism. The performance of the splicing process is a reaction of a command namely an information being received by the operator such as the current status of the first backing ribbon. Thus document D4 anticipates the subject-matter of claim 1.

(ii) Respondent (patent proprietor)

The appellant alleges that the adhesive element 9 of document D4 is a splicing device, but an adhesive tape alone cannot be a device (i.e. a mechanism, an apparatus or an item of equipment). In feature 2 the term "performing" implies active behaviour of the splicing device, which cannot occur with a passive element such as the adhesive tape 9 of document D4. Even if the adhesive tape 9 were a device, in the context of document D4 such tape would not perform the splice on command, because the adhesive tape of document D4 does not react to an external command or signal. Moreover, claim 5 of the patent mentions an adhesive tape, but does not refer to it as a splicing device.

(e) Article 100(a) EPC: novelty over document D10

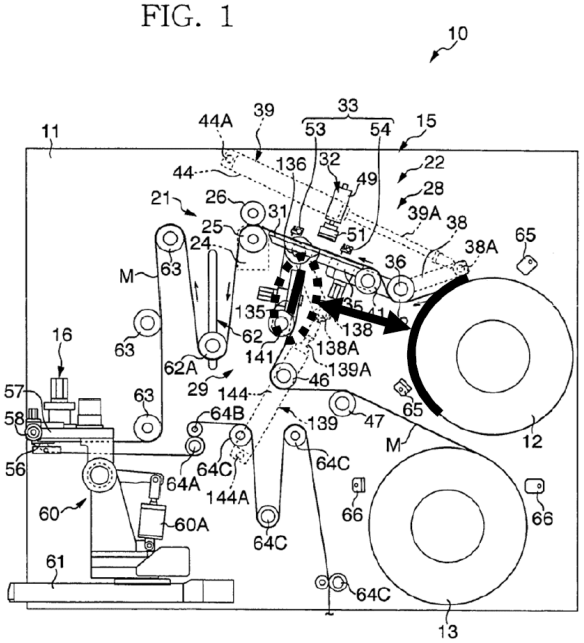
(i) Appellant (opponent)

Document D10 should be admitted because it was filed in response to the interpretation first set out in point 8.2.1 of the decision under appeal. This is believed to relate to an error in the German translation of claim 1 (both "being unwound" and "wound" were translated as "abgewickelt wird") detected by the

opposition division. This was not discussed during the written proceedings preceding the oral proceedings before the opposition division.

Contrary to the preliminary opinion of the board, document D10 discloses features 2 and 3. Patch M1 shown in Figs. 3(C) and 3(D) is glued onto an end section of the ribbon that bears no label. The section of the ribbon onto which patch M1 is glued qualifies as first splicing region within the meaning of feature 2 because it is suitable for splicing to take place there. Incidentally, claim 5 of the patent describes an adhesive sheet-like element as part of the splicing region. Feature 2 does not require the splicing region to have any particular form. Moreover, in Fig. 1 of document D10, the second splicing region of the ribbon of the second roll 13 faces the labels L being unwound from the first roll 12, as can be seen in the annotated figure below). Therefore, document D10 also discloses feature 3.

FIG. 1



Claim 1 does not define the relative timing of splicing or the implementation of feature 3.

(ii) Respondent (patent proprietor)

The appellant filed document D10 in response to allegedly new reasoning and an allegedly new interpretation of feature 2 by the opposition division in the context of document D3. Regarding the interpretation of the expression "being unwound", the opponent first admitted that the first backing ribbon is continuously advanced (notice of opposition, page 5, last paragraph, and page 9, last paragraph). In reply to the opposition division's preliminary opinion, the opponent changed its mind and presented a "static" interpretation of the feature. At the oral proceedings, the opponent reaffirmed this interpretation. The opposition division merely disagreed with the opponent. It had already explained in its preliminary opinion that ribbon 14 was considered the first backing ribbon. Therefore, the filing of document D10 cannot be considered a response to a new argument or interpretation made for the first time at the oral proceedings before the department of first instance. Moreover, document D10 should not be admitted because it is not *prima facie* relevant and is clearly less relevant than the documents on file.

Fig. 3(D) does not disclose a first splicing region. Patch M1 is not part of the ribbon, and the region hidden by it is not used for splicing. Fig. 1 is remote from the splicing position; the splicing occurs only in Fig. 2. Connecting sheet M1 itself is a label because it is peelable and has a reusable adhesive layer (col. 7, lines 45 to 49; col. 8 lines 63 to 66), it is stuck onto the tail end 12a of the first band M

(col. 4, lines 24 to 27) and it is stuck by pressure onto the lead end 13b of the second band M (col. 8, lines 17 to 20). Therefore, features 2, 3 and 4 were not disclosed by document D10.

(f) Article 100(a) EPC: inventive step, starting from document D1, considering common general knowledge

(i) Appellant (opponent)

In view of the board's conclusion that document D1 does not unambiguously disclose the aspect "when [the first backing ribbon] is associated with the respective supporting element" of feature 4, the technical effect of the sole distinguishing feature resides in more precise guidance of the ribbon, i.e. an improved cut and better removal of the labels at the edge. It is common general knowledge that the ribbon can remain on its roll because this allows the ribbon to be tensioned. This is more straightforward than providing other rolls or braking devices.

(ii) Respondent (patent proprietor)

A document of the patent family of document D1 is cited in the patent. The problem associated with this document is the complexity of the solution proposed, involving as it does devices 13a and 13b for removing the labels. Such devices are not needed in the invention because there is no need to remove labels. Consequently, the problem solved by the invention consists in a simplification of the device. The problem proposed by the appellant is already solved in document D1 by means of a further device upstream of edge 14. A clamping device could block the ribbon's tail without

it being connected to the support. Thus feature 4 would not have been obvious to the skilled person.

(g) Auxiliary request 1

(i) Appellant (opponent)

The presence of an adhesive sheet 11 is disclosed in Figs. 1 and 2 of document D1 (see also page 13, last paragraph, and page 16, point 4). Thus the additional feature is disclosed in document D1 and cannot provide justification for an inventive step.

(ii) Respondent (patent proprietor)

The respondent declared that it had nothing to say on the disclosure of feature 6 in document D1.

(h) Auxiliary request 2 and remittal to the opposition division

(i) Respondent (patent proprietor)

The respondent declared that it was in favour of a remittal of the case to the opposition division, especially in view of the admittance of document D10 into the appeal proceedings.

(ii) Appellant (opponent)

The appellant declared that the board could decide on the further auxiliary requests itself but that it did not formally object to a remittal.

Reasons for the Decision

1. Claim interpretation

1.1 "splicing device" (feature 1)

The term "device" is not defined in the patent. The Oxford English Dictionary defines a "device" as "something devised or contrived for bringing about some end or result" but the term can also designate "the result of contriving; something devised or framed by art or inventive power; an invention, contrivance; esp. a mechanical contrivance (usually of a simple character) for some particular purpose". When considering what exactly is meant in the context of the patent, the skilled person would have realised that the drafter of the patent consistently used the term "device" to designate some sort of apparatus (see paragraphs [0004] ("device intended to detach the labels from the ribbon"), [0011] ("device for the automated separation of the labels"), [0034] ("cutting device 3"), etc.). The term is interpreted accordingly by the board.

1.2 "... performing on command the splice ..." (feature 2)

The expression "on command" as such means that the action is carried out as a reaction to an external signal. In principle, a worker manually splicing two ribbons after having received the order to do so would also act "on command".

That being said, it is clear from the sequence of steps resulting from features 1 and 2 that the second method step of performing on command the splice must be con-

sidered in combination with the first method step introducing the splicing device. Thus, feature 2 is necessarily performed by means of the splicing device. It follows that purely manual splicing is not covered by claim 1.

1.3 "... being unwound ..." (feature 2)

Feature 2 defines a second method step consisting in performing the splice between (i) a first region on a first ribbon that is "being unwound" from a first supporting element, and (ii) a second region on a second ribbon that is "wound" on a second supporting element. Thus, at least the first ribbon is unwinding, i.e. moving, when splicing takes place. The second ribbon can also be unwinding, but this is not necessary as long as it is also wound onto a support element.

1.4 "... region ... formed on a ... ribbon ..." (feature 2)

The patent does not define the expression "formed on". In the board's view, a region "formed on a ribbon" is a region of the ribbon and part of the ribbon. This understanding is in line with the description of Fig. 1 in paragraph [0021] of the patent.

1.5 "... when it is associated ..." (feature 4)

Feature 4 requires the first backing ribbon to have a portion free from labels "when it is associated" with the supporting element on which it is wound. The board understands "when it is associated" to refer to the time of association. To "associate" normally means to "join" or "link together" (see the corresponding entry in the online Oxford English Dictionary), and in the present context the ribbon is associated with the

supporting element if it is connected to the latter (cf. paragraph [0024] of the description of the patent: "... connected, for example by means of an adhesive tape ..."). In other words, the expression "when it is associated with the ... support element" is understood to refer to a period in time when the backing ribbon is connected to the supporting element.

1.6 "... substantially at the end ..." (feature 5)

The patent does not define the expression "substantially at the end of the first backing ribbon". The expression is found in paragraphs [0026] and [0030] of the description; an apparently synonymous expression "substantially at the tail of the first backing ribbon" is used in paragraph [0029].

The board understands the expression to designate the end portion of the first backing ribbon. The word "substantially" suggests that the expression is not limited to the very end of the ribbon but that regions close to the end are encompassed. This excludes at the very least portions of the ribbon that are closer to its beginning or its centre than to its end. The portion does not necessarily include the edge of the ribbon's end.

1.7 "... at the end of said ... ribbon ... that is associated ..." (feature 5)

The question arises as to whether the conjunction "that" refers to the first backing ribbon or to its end. From a grammatical point of view, both interpretations seem possible. The opposition division argued that the words "that is" could have been omitted if the ribbon as such was meant (see point 8.2.1 of the

decision under appeal). Against that interpretation, it could be said that feature 4 expressly states that the ribbon is associated with the supporting element. The description is ambiguous in this respect because both the end (see paragraph [0024]) and the ribbon as such (see paragraph [0027]) are said to be associated with the central body 21 or the supporting element 5a. That being said, the description never envisages an association that is not obtained via the end portion of the ribbon. Moreover, the last clause of feature 5 would be totally redundant if it only established the link between the first backing ribbon and the first supporting element, which is already expressed in features 2 and 4. Having considered all this, the board understands the conjunction "that" to refer to the first backing ribbon's end.

2. Main request

2.1 Ground for opposition pursuant to Article 100(c) EPC

2.1.1 Change of category

The appellant's first objection concerns the change of category from an apparatus for performing a splicing process (claim 1 as originally filed) to a method of using the apparatus for performing the splicing process (claim 1 as granted).

As can be seen from the following comparison, claim 1 of the patent as granted is close in wording to original claim 1 (strike-through indicates deleted material, underlining indicates added text):

"~~An assembly (1)~~Method for feeding backing ribbon (2) for adhesive labels for labeling products to be labeled, characterized in that it comprises the following step:
providing a splicing device (4) and at least two supporting elements (5a, 5b) for said backing ribbon (2)~~,~~; ~~said splicing device (4) being intended to~~ perform~~ing~~ on command the splice between a first splicing region (6), formed on a first backing ribbon (2a) being unwound from a first supporting element (5a), and a second splicing region (7), formed on a second backing ribbon (2b) wound on a second supporting element (5b), said first backing ribbon (2a) supporting a plurality of adhesive labels (8) which are arranged, mutually spaced, on the face (11) directed toward said second splicing region (7), said first backing ribbon (2a) having, when it is associated with the respective supporting element (5a), at least one portion (13) that is free from self-adhesive labels (8) and forms said first splicing region (6), said at least one portion (13) being located substantially at the end of said first backing ribbon (2a) that is associated with said first supporting element (5a)."

The amendments essentially consist in (1) the claim no longer being directed at an assembly for feeding backing ribbon comprising a splicing device but to a method for feeding backing ribbon comprising the step of providing a splicing device, and (2) the splicing device no longer being said to be intended to perform the splice, *performing the splice* instead constituting a second method step.

The question to be answered by the board is whether the claimed method for feeding backing ribbon for adhesive labels for labelling products has a basis in the original application.

The fact that a change of claim category has occurred is not decisive in this context, nor is the definition of the object of the invention or the disclosure of the benefits of what is now claimed. The only relevant question is whether the claimed method was disclosed in the original application.

Incidentally, Article 64(2) EPC states that if the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process. This provision defines the protection conferred by a European patent. It is not relevant for determining whether the subject-matter of the patent extends beyond the content of the application as filed within the meaning of Article 123(2) EPC.

In this context, the board finds that the reference in the appealed decision to T 49/11 is pertinent. As stated in T 49/11, decision G 2/88 only deals with the change of claim category during opposition proceedings under the provisions of Article 123(3) EPC and is therefore not relevant to the question of whether the change in claim category, which took place before the grant of the patent, has basis in the application as originally filed. Indeed, a change in claim category *per se* does not add subject-matter (see T 49/11, Reasons 4.1.3 and 4.1.4).

The board cannot see any extension of the subject-matter beyond the content of the original application.

The originally claimed assembly and its disclosed intention implicitly disclose the operation of the assembly, i.e. the method that is now claimed. The reformulation of original claim 1 expresses just another way of considering the same technical reality.

2.1.2 Manual splicing

(a) Admission of the objection

The appellant's second objection concerns the deletion of the words "said splicing device (4) being intended to" from the original claim.

The board decided to admit the appellant's objection under Article 13(2) RPBA because the board's remark in point 6.2 of the communication under Article 15(1) RPBA (i.e. that a worker manually splicing two ribbons after having received the order to do so would also act "on command") triggered a misunderstanding, namely that that manual splicing was encompassed by claim. This, in turn, led the appellant to raise this objection. These are exceptional circumstances justifying the admission of the objection.

(b) Merit of the objection

The appellant understood the board's statement to mean that the board considered claim 1 to encompass manual splicing. This was, however, not part of the disclosure of the application as filed, where only the use of a splicing device is envisaged (see page 3, lines 19 to 24; page 5, lines 18 to 21; page 7, lines 2 to 8).

Point 6.2 of the board's communication pursuant to Article 15(1) RPBA only examined the meaning of the

expression "on command" in itself and did not draw conclusions regarding the overall scope of the claim resulting from the combination of all features. As stated above (see point 1.2), claim 1 does not encompass a method where the splicing is purely manual, without the use of a splicing device. The deletion of the words "said splicing device ... being intended to" in original claim 1 does not allow a contrary conclusion to be drawn, as the person skilled in the art would have understood the sequence of features 1 and 2 to mean that splicing is carried out using the splicing device. Thus the amendment does not lead to subject-matter extending beyond the content of the application as filed.

2.1.3 Conclusion

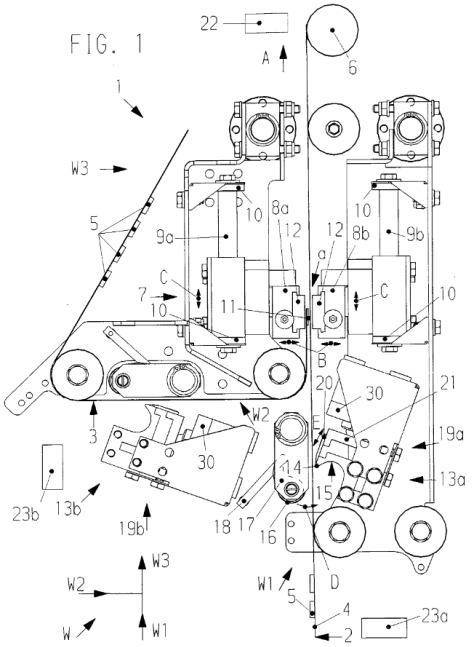
The ground of opposition pursuant to Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

2.2 Grounds for opposition pursuant to Article 100(a) EPC

2.2.1 Novelty (Article 100(a) in conjunction with Article 54(1) EPC)

(a) Novelty in view of document D1/D2

Documents D1 and D2 each disclose a device for splicing label tapes with a conveyor 6 for conveying a first label tape 2 and a second label tape 3 along a conveyor path. The device comprises a splicing station 7 exerting a splicing pressure during the conveying. A cutting device 19a, 19b for automatically forming an end edge 24a, 34a at the trailing end of the leading label tape 2, 3 is provided upstream of the splicing station 7 in the conveying direction.



As can be seen from point 8.1 of the decision under appeal, the opposition division concluded that features 4 and 5 are not disclosed in document D1/D2. Feature 4 requires the first backing ribbon to have, when it is associated with the respective supporting element, a portion which is free from self-adhesive labels and which forms the first splicing region. In accordance with feature 5, the portion(s) free from self-adhesive labels and forming the first splicing region must be located substantially at the end of the first backing ribbon associated with the first supporting element.

The opposition division was of the opinion that feature 4 is not disclosed in document D1/D2 because

the labels 5 are removed from the ribbons 2, 3 by devices 13a, 13b situated between the supporting element (not shown in Fig. 1) and the splicing device: there is no portion free from labels when the ribbon is associated with the supporting element (see point 8.1.1 of the decision under appeal)

The appellant criticised the opposition division's interpretation of feature 5 as too narrow. The board has explained how it interprets features 4 and 5 in points 1.5 to 1.7 above.

In document D1/D2, the portion free from self-adhesive labels is formed once the end of the backing ribbon 2 has been detected (see document D1, page 14, lines 1 to 25) and is therefore sufficiently close to the end of the backing ribbon to be considered "substantially" at its end. Thus feature 5 is disclosed in document D1.

At the time the portion free from self-adhesive labels is formed, the end of ribbon 2 is approaching (D1, page 14: "herannahend"). The board notes that the disclosure of document D1 in this respect is ambiguous because the German expression "herannahendes Ende" can be understood in two different ways. First, it can have a spatial sense and mean that the position of the end portion is coming nearer. If so, the end portion of the ribbon is presumably no longer associated with the respective supporting element and feature 4 is not fully disclosed in document D1. Alternatively, the expression can have a temporal sense and indicate that the moment at which the end of the ribbon is reached is close. In this latter case it is not necessary to assume that the ribbon is disconnected from the supporting element. The second understanding seems to be suggested on page 6, third paragraph, where it is

said, albeit in the context of the general description of document D1, that the sensor is capable of detecting when the ribbon will be used up (and not that it is used up). If this is the meaning of the statement on page 14, lines 1 and 2, then feature 4 would be disclosed.

Having weighed up these elements, the board concluded that the ambiguity of disclosure is such that feature 4 cannot be said to be directly and unambiguously disclosed. Consequently, the subject-matter of claim 1 is new over the disclosure of document D1/D2.

(b) Novelty in view of document D3

Document D3 discloses a splicer for a label-feeding machine. It comprises a supplemental roll 35 of label-bearing strip S2. When the primary roll 14 becomes depleted, the tail of the strip S1 from the roll 14 is pressed against the adhesive tape 41 so that the two strips S1 and S2 are united (see col. 4, lines 42 to 52).

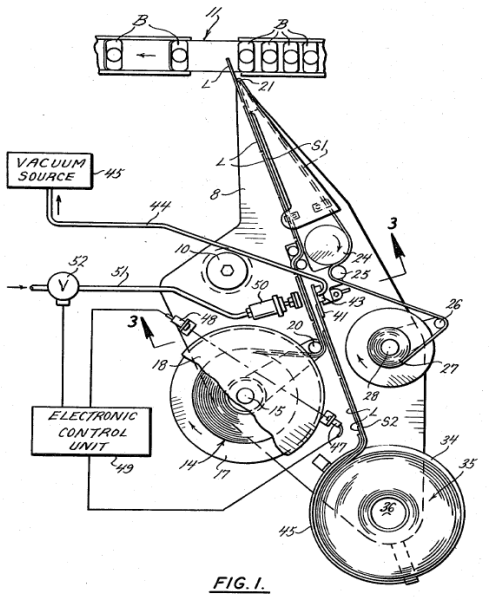


FIG. 1.

In point 8.2.1 of the decision under appeal, the opposition division found at least feature 3 not to be disclosed in document D3 because only roll 14 qualifies as a first backing ribbon roll that is being unwound (in accordance with feature 2), but roll 14 does not

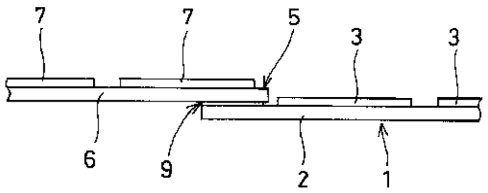
provide the labels on the face directed towards the second splicing region.

The appellant's core argument is that the supplementary roll 35 also qualifies as first backing ribbon roll because it is unwound at least to some extent during its installation. However, this interpretation disregards the wording "being unwound" in feature 2, which requires splicing to take place at the same time as the unwinding (see point 1.3 above). Thus the subject-matter of claim 1 is new in view of the disclosure of document D3, since the latter does not disclose feature 3.

(c) Novelty in view of document D4

Figures 8 to 10 of document D4 concern a method and a device for joining a series of labels 1, 5.

【図１０】



The opposition division examined the novelty objection based on document D4 in point 8.3 of the reasons for the decision under appeal. It noted that the splicing method disclosed in document D4 was manual (see paragraph [0002]: 人の手作業) and that there was no step of performing the splice "on command", i.e. in response to an external signal, as required by feature 2. The opposition division also noted that claim 5 of the patent refers to an adhesive tape and deduced that the skilled person would not have considered that the adhesive tape of document D4 is a splicing device according to feature 1.

The board has indicated its interpretation of the expression "splicing device" in point 1.1 above. Accordingly, the splice tape 9 cannot constitute a splicing device.

The board cannot find any disclosure in document D4 of the feature that the splicing is performed "on command" as required by feature 2 (for the board's interpretation of this feature, see point 1.2 above). The assertion that information being received by the operator, such as the current status of the first backing ribbon, would constitute such a command is unconvincing.

Consequently, the subject-matter of claim 1 is new over document D4 because this document does not disclose features 1 and 2.

(d) Novelty in view of document D10

(i) Admittance of document D10

The board decided to exercise its discretion pursuant to Article 12(4), second sentence, RPBA and admit document D10.

The board is in agreement with the appellant that the filing of document D10 was a legitimate reaction to the opposition division's interpretation of the term "being unwound" in feature 2 in view of document D3, made for the first time at the oral proceedings and reflected in the appealed decision at point 8.2.1 of the reasons. This interpretation apparently relied on the consideration, never made in the written proceedings, that according to the German translation of claim 1 both "being unwound" and "wound" were translated as

"abgewickelt wird"). The appellant had therefore no reason to file document D10 earlier in the proceedings.

(ii) Merit of the objection

Document D10 discloses a connecting device 15 comprising a supply means 21 supplying bands M wound around a first roll 12 and a second roll 13, and a connecting means 22 for connecting the region of a tail end 12a, 13a on one roll to a lead end 12b, 13b on the other roll. On the side of the tail end, a connection sheet M1 is applied. The connection means 22 abuts the tail end with the lead end when the tai end reaches a prescribed position. Thus it connects the bands M of the first and the second rolls 12 and 13 through the connection sheet M1.

FIG. 1

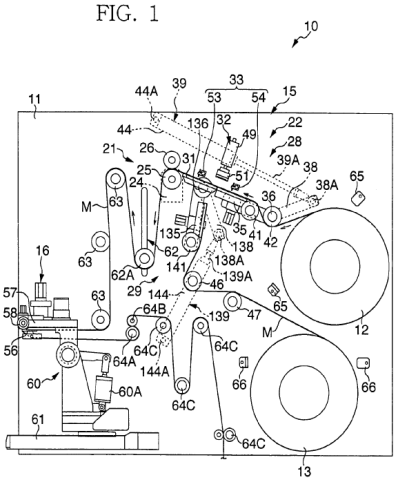
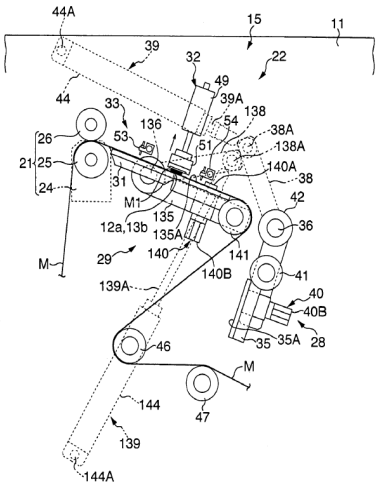


FIG. 8



The disclosure of features 2 to 4 was disputed.

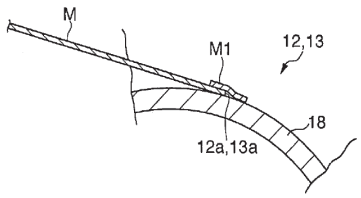
Feature 2

The method step defined in feature 2 consists in performing on command the splice between a first splicing region formed on a first backing ribbon being

unwound from a first supporting element, and a second splicing region formed on a second backing ribbon wound on a second supporting element.

The appellant argued that connection sheet M1 formed the splicing region according to feature 2 because it formed part of the first band M (see Fig. 3(C)).

FIG. 3(C)



However, sheet M1 is not a portion of the first band but an additional label that connects the first band to the core 18 of roll 12 (for the board's interpretation of the expression "formed on", see point 1.4 above).

Alternatively, the appellant considered the region of the band M covered by sheet M1 to constitute a splicing region according to feature 2. However, as pointed out by the respondent, the region covered by sheet M1 is not involved in the splicing. It remains covered by sheet M1 and is not affected by the splicing operation.

Thus feature 2 is not disclosed.

Feature 3

According to feature 3, the first backing ribbon carries a plurality of adhesive labels which are arranged, mutually spaced, on the face directed toward said second splicing region.

The appellant argued that this feature is disclosed for instance in Fig. 1 of document D10, i.e. during the

time when the lead end of the second band M wound on roll 13 is waiting for splicing to take place:

FIG. 1

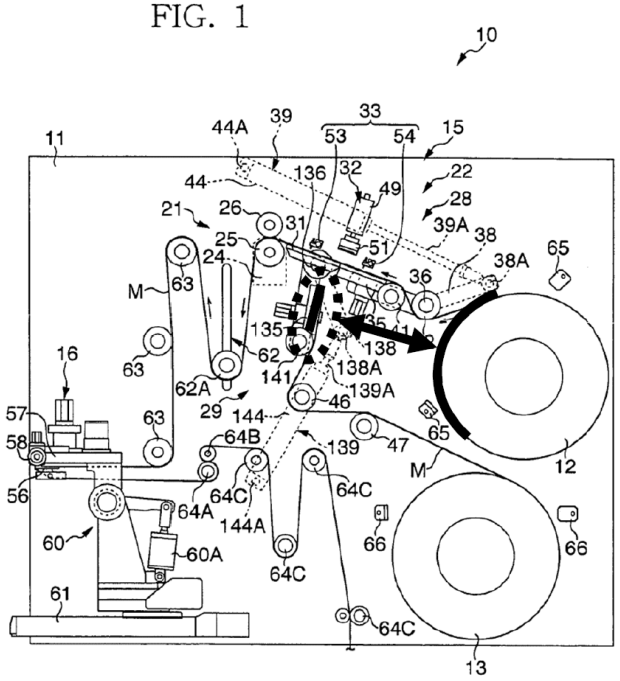


Fig. 1 of document D10, as annotated by the appellant

This argument is unconvincing because feature 3 is part of the second method step, which concerns performing the splice. When splicing occurs, the lead end of the second band M wound on roll 13 is aligned with the tail end of the first band M that was on roll 12. Thus feature 3 is not disclosed.

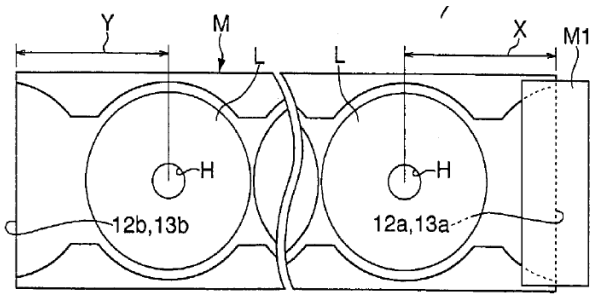
Feature 4

Feature 4 requires the first backing ribbon to have, when it is associated with the respective supporting element, at least one portion that is free from self-adhesive labels and forms said first splicing region.

In this context, the appellant referred to Fig. 3(D) of document D10, which is a plan view showing the lead end 12b, 13b and the tail end 12a, 13a of a band. The

appellant pointed out that the last label is missing and that the connecting sheet M1 is free of labels.

FIG. 3(D)



At the end of the band shown in Fig. 3(D), there is one label L missing, so that there is a portion free from labels. The respondent argued that connecting sheet M1 itself is a label because it is peelable and has a reusable adhesive layer (col. 7, lines 45 to 49; col. 8 lines 63 to 66), it is stuck onto the tail end 12a of the first band M (col. 4, lines 24 to 27) and it is stuck by pressure onto the lead end 13b of the second band M (col. 8, lines 17 to 20). The board does not endorse this view because the labels within the meaning of claim 1, contrary to the connecting sheet M1, are used for labelling products.

(iii) Conclusion regarding document D10

The subject-matter of claim 1 is new over document D10 because the latter does not disclose features 2 and 3.

(e) Overall conclusion on novelty

None of the documents on file anticipates the subject-matter of claim 1. The ground for opposition under Article 100(a) in conjunction with Article 54(1) EPC does not prejudice the maintenance of the patent as granted.

2.2.2 Inventive step (Article 100(a) in conjunction with Article 56 EPC), starting from document D1/D2

(a) Differences

As noted in point 2.2.1 (a) above, claim 1 differs from the disclosure of document D1/D2 in that there is no portion of the first backing ribbon free from self-adhesive labels when the ribbon is associated with the supporting element.

(b) Objective technical problem

Ensuring that the ribbon is associated with the supporting element has the technical effect of providing more precise guidance of the ribbon, resulting in better cut and removal of the labels at the edge. The objective technical problem can be seen as providing this effect.

(c) Obviousness for the skilled person

The most straightforward solution to the objective technical problem is to make use of the existing supporting elements. This solution is suggested to the skilled person by the teaching in document D1 that sensors may be used that make it possible to predict when the ribbon reaches its end (see page 6, third paragraph). Thus the provision of feature 4 would have been obvious to the skilled person starting from document D1/D2 in view of common general knowledge.

(d) Conclusion

The subject-matter of claim 1 is not inventive in view of document D1/D2.

2.3 Conclusion regarding the main request

As the ground for opposition under Article 100(a) in conjunction with Article 56 EPC prejudices the maintenance of the patent as granted, the patent cannot be maintained on the basis of the main request.

The decision under appeal must be set aside.

3. Auxiliary request 1

Claim 1 of auxiliary request 1 differs from claim 1 of the main request by feature 6, according to which the second splicing region comprises a double-adhesive sheet-like element associated with the free end of the second backing ribbon and arranged so as to face the first splicing region during splicing operations.

This feature is disclosed in document D1, where overlapping splicing is obtained with the aid of a double-sided adhesive tape 11 (see e.g. Figure 1 and page 9, lines 21 to 26).

Thus the sole additional feature cannot further distinguish the subject-matter of claim 1 from the disclosure of document D1.

Consequently, the subject-matter of claim 1 of auxiliary request 1 lacks inventive step over document D1 (Article 56 EPC), for the same reasons as claim 1 of the main request.

It follows that the patent cannot be maintained on the basis of auxiliary request 1. This request must be dismissed.

4. Auxiliary request 2 - Remittal

Claim 1 of auxiliary request 2 differs from claim 1 of the main request by two features.

According to feature 7, "said feeder assembly" is functionally associated with a device for detecting a parameter related to the first backing ribbon that is unwound from the first supporting element. This device is adapted to control, once said parameter has been detected, said splicing device.

Feature 8 introduces the step of detecting the portion of the first ribbon that is free from adhesive labels with the detection device.

Both features were features of granted claims. Consequently, their compliance with the requirements of Article 84 EPC may not be examined in accordance with decision G 3/14 of the Enlarged Board of Appeal.

Although the expression "said feeder assembly" has no precedent in claim 1, the skilled person would have understood that this feature refers to an assembly comprising the splicing device and the supporting elements of feature 1.

The question of inventive-step of the subject-matter claimed in auxiliary request 2 had not been discussed in the proceedings before the opposition division. Having considered the issues likely to arise by auxiliary request 2 and the written submissions of the parties regarding this request, the board found that these circumstances amounted to special reasons justifying a remittal of the matter to the opposition division pursuant to Article 11 RPBA and decided to

grant the respondent's request to remit the case to the opposition division for further prosecution (Article 111(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division for further prosecution.

The Registrar: The Chairman:

D. Hampe T. Vermeulen

Decision electronically authenticated