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T 160192-342

In der Anlage erhalten Sie

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- une copie de la décision rectifiant des erreurs
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Anmeldung Nr. / Patent Nr.:

(soweit nicht aus der Anlage ersichtlich)

Application No. / Patent No.:

86308250.9

(if not apparent from enclosure)

Demande n° / Brevet n°:

(si le n° n'apparaît pas sur l'annexe)

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T 1601 92 - 3.4.2

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D E C I S I O N
of 27 January 1994

Case Number: T 0160/92 - 3.4.2

Application Number: 86308250.9

Publication Number: 0220943

IPC: G03C 1/76, G03C 5/00, B41C 1/06

Language of the proceedings: EN

Title of invention:
Method for making printing plates and assembly useful therein

Applicant:
The Mead Corporation

Opponent:
-

Headword:
-

Relevant legal norms:
EPC Art. 54(2), 56, 96(3), 111(1)
EPC R. 44(1), 51(3), 68(2)

Keyword:
"State of the art - abstract (yes)"
"Deemed to be withdrawn (no)"
"Substantial procedural violation (no)"
"Inventive step (no)"
"Decision re appeals - remittal (no)"

Decisions cited:
T 0077/87 (OJ EPO 7/1990, 280)

Headnote follows.

.../...

Headnote:

- I. The teaching of a prepublished abstract of a Japanese patent document, considered *per se* without its corresponding original document, forms *prima facie* part of the prior art and may be legitimately cited as such if nothing on file points to its invalidity as prior art. The party intending to contest the validity as prior art of said teaching on the basis of the original document teaching has the burden of proof (points 2.1 to 2.5 of the Reasons).
- II. The answer to the controversial question whether the Applicant was misled about the possibility of imminent refusal of the application, must be sought by focusing on the procedurally relevant content of the file (points 3.2 to 3.4 of the Reasons).
- III. A letter of reply to a communication of the Examining Division filed in due time by the Applicant and dealing with substantial points of this communication constitutes a reply in the sense of Article 96(3) EPC. Therefore, procedurally, it precludes deeming the application withdrawn; the further declaration: "This present letter is not to be treated as a formal response to that communication" is merely contradictory to the facts, the reality of which cannot be made null and void by such an expedient (point 3.5 of the Reasons).



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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0160/92 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 27 January 1994

Appellant:

The Mead Corporation
Mead World Headquarters
Courthouse Plaza Northeast
Dayton
Ohio 45463 (US)

Representative:

Deans, Michael John Percy
Lloyd Wise, Tregear & Co.
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105-109 Strand
London WC2R 0AE (GB)

Decision under appeal:

Decision of the Examining Division of the European
Patent Office dated 4 September 1991 refusing
European patent application No. 86 308 250.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Turrini
Members: W.W.G. Hofmann
L.C. Mancini

Summary of Facts and Submissions

- I. The Appellant (Applicant) lodged an appeal against the decision of the Examining Division to refuse the application No. 86 308 250.9 (publication No. 0 220 943).

The Examining Division had expressed the view that the subject-matter of Claims 1, 12 and 15 did not involve an inventive step, having regard to the document

(D1) "Patent Abstracts of Japan" Vol. 8, No. 80 (M-289) (1517), 12 April 1984.

- II. In a communication sent together with summons to oral proceedings, the Board cited the further document

(D2) US-A-4 399 209

which is mentioned in the application and had also been mentioned in the European Search Report.

- III. Oral proceedings were held, at the end of which the Appellant requested that the decision under appeal be set aside, that - according to a main request - the case be remitted to the first instance on account of procedural violations, and that - according to first to sixth auxiliary requests - a patent be granted on the basis of the six sets of documents (first to sixth auxiliary requests) filed at the oral proceedings.

- IV. The original Claims 1, 12 and 15, which are maintained according to the main request, read as follows:

"1. A process for producing a printing plate characterised in that it comprises the steps of:

image-wise exposing to actinic radiation a transfer sheet including a support having a layer of microcapsules on the surface thereof, said microcapsules enveloping a photohardenable composition; prior to or after image-wise exposing said transfer sheet, assembling said transfer sheet with a support for a printing plate; subjecting said image-wise exposed transfer sheet assembled with said support for said printing plate to a uniform rupturing force such that said microcapsules rupture and image-wise transfer said photohardenable composition to said support for said printing plate; removing said transfer sheet from said support for said printing plate; and hardening said transferred photohardenable composition to form an ink-receptive polymer image.

12. Apparatus for producing a printing plate, characterised in that it comprises the combination of a transfer sheet including a support having a layer of microcapsules containing a photohardenable composition in the internal phase; and a support for a printing plate; said transfer sheet and said support for a printing plate being selected such that said combination is useful in forming a printing plate by a process including the steps of image-wise exposing said transfer sheet to actinic radiation, subjecting said transfer sheet to a uniform rupturing force in contact with said printing plate support such that said microcapsules rupture and said photohardenable composition is image-wise transferred to said printing plate support, and hardening said transferred composition.

15. A transfer sheet comprising a support having a layer of microcapsules on one surface thereof, the sheet being characterised in being adapted for forming a printing plate by assembling said sheet with a support for a printing plate, image-wise exposing said sheet and

subjecting said sheet in contact with said support for said printing plate to a uniform rupturing force, the said microcapsules have a discrete capsule wall and enveloping a photohardenable composition, and the support being transparent."

Claims 2 to 11 and 13, 14 are respectively dependent on Claims 1 and 12.

The claims according to the first auxiliary request differ from those according to the main request only by the correction of the reference to the preceding claims in Claims 7, 8 and 14, and by the insertion of "without any chromogenic material" after "a photohardenable composition" in Claim 15.

The claims according to the second auxiliary request correspond to those of the first auxiliary request, except for the fact that Claim 15 is deleted.

The claims according to the third auxiliary request correspond to those of the first auxiliary request, except for the additional insertion of "which accepts water and rejects ink":

in Claim 1 after "assembling said transfer sheet with a support for a printing plate",

in Claim 12 after "the internal phase; and a support for a printing plate", and

in Claim 15 after "by assembling said sheet with a support for a printing plate".

The claims according to the fourth auxiliary request correspond to those of the third auxiliary request, except for the fact that Claim 15 is deleted.

The claims according to the fifth auxiliary request differ from those of the third auxiliary request only by the fact that in Claims 1, 12 and 15 the insertion "which accepts water and rejects ink" is replaced by "made of aluminium, anodized aluminium, oxidized aluminium, stainless steel, cobalt-plated steel, copper-coated steel, chrome-plated steel, or copper-coated epoxy", and that Claim 4 is deleted and the following claims renumbered.

The claims according to the sixth auxiliary request correspond to those of the fifth auxiliary request, except for the fact that Claim 14 is deleted.

It should be remarked that the expression "copper-coated steel" in Claims 1 and 12 of the fifth and sixth auxiliary requests should evidently - as in Claim 14 of the fifth auxiliary request - read "copper-plated steel" (see column 6, lines 17, 18 of the published patent application in suit).

V. The Appellant essentially argued as follows:

The Search Division as well as the Examining Division did not proceed correctly when they cited D1 which is an abstract of a Japanese patent document, without also citing the Japanese patent document itself (if the citation in the European Search Report, using the "&"-sign, was meant to include the Japanese patent document, a copy of this document should have been sent to the Appellant and the document should have been included in the list of patent family members). The Examining Division referred to the abstract only. The Board of Appeal Decision T 77/87 (OJ 7/1990, 280) and the corresponding notification in the Supplement to OJ 6/1990, 24, make it clear that an abstract may not be regarded as an independent document in isolation. The

primary source of disclosure must be the citation, and not the abstract.

Since the Examining Division only relied on this abstract for denying the inventive step of the claimed subject-matter, their statements are not reasoned.

After the second communication of the Examining Division, in the course of two telephone calls, the Examiner misled the Appellant into believing that a further communication (and not a refusal) would be issued. Despite this announcement, the Examining Division refused the application.

Moreover, the letter of the Appellant, dated 19 February 1991, referring to the second communication of the Examining Division, was not a reply in the sense of Article 96(3) EPC and therefore, after expiry of the time limit set for answering the second communication, the application should have been deemed to be withdrawn, and not refused.

The above remarks point to at least three "serious" procedural violations which justify the remittal of the case to the Examining Division.

According to D1, a printing plate is prepared by treating the microcapsule layer entirely on the surface of the printing plate, while in the present case the image-wise exposure is done on a transfer sheet. For this reason, almost none of the features of Claim 1 are present in the process according to D1. According to D1, the image structure produced on the surface of the printing plate consists of lipophilic resin and hydrophilic unbroken capsules, while in the present case this structure consists of lipophilic resin and the hydrophilic uncovered support surface. D2 does not

relate to printing plates, but to the production of directly visible copies by means of a chromogenic material contained in the microcapsules on the transfer sheet. It is not obvious to apply this colour producing process to the production of printing plates.

The transfer sheet claimed in present Claim 15 is distinguished from the transfer sheet disclosed in D2 by the inserted feature "without any chromogenic material".

Reasons for the Decision

1. The appeal is admissible.

2. *Citability of the abstract*

2.1 The Appellant takes issue with the practice of the Search Divisions of the European Patent Office of citing published abstracts of articles if the original articles are not available to them, and - as in the present case - of published English abstracts of Japanese patent documents (in both cases citing the original document only for information after an ampersand sign ("&"), e.g. in order to avoid any possible error in the identification of the abstract, and not sending copies thereof to the Applicant). He moreover objects to the fact that the Examining Division, in the present case, also based its judgment of inventive step of the claimed subject-matter on such an abstract of a Japanese patent document (D1) without introducing the original document and citing specific passages thereof.

2.2 Rule 44(1) EPC prescribes that the European Search Report shall mention those documents, available to the European Patent Office at the time of drawing up the

report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step. Regarding the examination procedure, Rules 51(3) and 68(2) (first sentence) EPC require that the communications pursuant to Article 96, paragraph 2, and the decisions open to appeal shall be reasoned. Such requirement means that, if such objections are made, the cited documents must be suitable to provide reasons for considering the invention as forming part of the state of the art (Article 54(1) EPC) or as being obvious to a person skilled in the art having regard to the state of the art (Article 56 EPC). The state of the art shall be held to comprise everything made available to the public - among others by means of a written description - before the date of filing of the European patent application (Article 54(2) EPC).

2.3 In the present case, the cited abstract (D1) is actually such a prepublished written description, so that any doubts concerning its validity as prior art can only relate to what has been made available to the public. Regarding the question whether citing this abstract (without the original document from which it is taken) is permissible or constitutes a procedural violation, it has to be considered whether or not a statement based on such an abstract alone can be regarded as reasoned in the sense of Rules 51(3) and 68(2) EPC.

In the judgment of the Board, the abstract D1 provides a certain amount of technical information and there is no indication for the skilled reader that this information is invalid, which fact renders D1 suitable as a basis for reasons concerning novelty or inventive step. The line of reasoning of the Examining Division based on D1 is complete and understandable.

Therefore, as judged from the documents on file, the statements and the decision of the Examining Division, based on the above-mentioned abstract, were reasoned in the sense of Rules 51(3) and 68(2) EPC.

2.4 It lies in the nature of citing and reasoning that the state of the art as a whole cannot be cited, and that Search Divisions and Examining Divisions must select, in exercise of their judgment, from those documents which they have available and the content of which they can understand, that portion of the state of the art which appears relevant to them. This can never fully exclude the possibility that there may somewhere exist - and this is not limited to the relationship between abstracts and their original documents alone - more relevant descriptions or even descriptions which would show relevancy of the cited documents in a different light.

2.5 With respect to this possibility, the question of citability of an abstract must be well distinguished from the different question which of the teachings of an abstract and an original document have to be considered by the Examining or Opposition Division **if both documents are available to them and contain conflicting teachings**. The Board of Appeal Decision T 77/87 (OJ 7/1990, 280), on which the Appellant entirely relies for opposing the citability of abstracts, relates to this latter question.

Likewise, the "notification" also mentioned by the Appellant (Supplement to OJ 6/1990, 24), is actually a short summary of the above Decision T 77/87, and the sentence "the disclosure of this abstract document should be interpreted by reference to its original for the purpose of ascertaining the technical reality of what has been disclosed and should not be regarded as an

independent document in isolation", referred to by the Appellant, must be understood in the context of the case underlying that decision, which context is clearly taken into account in the decision itself.

The decision concerns an appeal after opposition procedure in which the abstract and the corresponding original document had both been made available to the Board, and comes to the conclusion that "when, as here, it is clear from related contemporaneously available evidence that the literal disclosure of a document is erroneous and does not represent the intended technical reality, such an erroneous disclosure should not be considered as part of the state of the art" (paragraph 4.1.4 of the reasons).

In the present case, this question did not arise since only the abstract D1 is on file and there is no indication that its disclosure might be erroneous, or that its disclosure might otherwise have to be interpreted differently in the light of the disclosure of the original document. Therefore, the literal disclosure of D1 belongs *prima facie* to the state of the art. The Appellant would have had the burden of proof to show that this disclosure **was actually not** part of the state of the art. The Appellant failed to do so.

The teaching of D1 taken alone, therefore, is to be considered as part of the state of the art.

- 2.6 For these reasons, the Board cannot see a procedural violation in the mere facts of citing and reasoning on the basis of an abstract.

3. *Main request; substantial procedural violations*

3.1 The first point where the Appellant sees a substantial procedural violation, i.e. citation of a non-citable document, has been dealt with above in paragraph 2.

3.2 The Appellant claims that in two telephone conversations with the primary examiner he was misled into believing that a refusal was not imminent, as a further communication would be issued as the next step of the procedure.

The Appellant submitted affidavits of two employees of the firm of European patent attorneys representing the Appellant, in which affidavits they confirm that in the time after the second communication of the Examining Division they telephoned the Primary Examiner (first and second telephone call) and were informed by him that a further communication would be issued.

In a note on file giving the "Result of consultation" concerning a (third) telephone call received from the representative of the Appellant after the refusal of the application, the Primary Examiner declares that he never said that a further communication would be issued.

Thus, there are conflicting declarations as to what was said during these first two telephone calls.

3.3 Telephone calls between the examiners of the European Patent Office and the Applicants, in some situations, can be a tool for speeding up an otherwise slower procedure. However, one should be warned against expecting too much from them in critical situations, as misunderstandings can happen more easily than in writing, sometimes promoted by the fact that one of the two participants in the conversation might not be fully

prepared for dealing with the case. It is with reason that the procedure before the European Patent Office is in principle, with the exception of oral proceedings under Article 116 EPC, a written procedure. Moreover, in the examination (as well as in the opposition) procedure the primary examiner is only one of a division of three examiners, it being well known that his individual statements cannot be binding for the Division. Furthermore, telephone conversations are not provided for in the EPC and do not, as such, form part of the formal procedure before the Office.

The Board does not deny that the principle of good faith should govern all the actions over procedural matters, even the informal ones, of employees of the European Patent Office towards parties to the proceedings.

However, for setting aside the decision of the Examining Division to refuse the application, to which aim the request of the Appellant is directed in the present case, it would be required that manifestly the rules of procedure as laid down in the EPC had been infringed. Since telephone conversations do not form part of said formal procedure, the Board does not consider it necessary to conduct a detailed investigation seeking to clear up what was said in the above-mentioned telephone calls, the sequence of procedurally relevant facts being already clearly established in the file.

- 3.4 The file shows that the Examining Division issued two communications in which reasons were given why in their view the subject-matter of Claims 1, 12 and 15 lacked an inventive step, having regard to D1, and why D1 could be used as prior art (because its technical information could be understood by the person skilled in the art). The second communication contains an explicit invitation to deal with the objections raised against the inventive

step of the claimed subject-matter and ends with the statement that "if the Applicant fails to deal with them, the application will be rejected in accordance with Article 97(1) EPC". In his reply, dated 19 February 1991, the Appellant again (as in his first response) argued that D1 could not be cited as prior art. He did not otherwise discuss the question of inventive step, nor did he file new claims. In a further letter, dated 1 May 1991, shortly before the end of the time limit set for replying to the second communication of the Examining Division, the Appellant only expressed his wish to obtain a reply from the Examining Division, and stated that as long as the matter raised in his last letter (citability of D1) was unresolved, the representative was unable to obtain full instructions from his clients. Three months after expiry of the above-mentioned time limit the Examining Division refused the application.

Whatever the Appellant's impression was about the content of the above-mentioned informal telephone calls, he should have realised from the objections raised in the official communications and in particular from the announcement of likely rejection at the end of the second communication that refusal of the application was imminent if his arguments regarding the citability of D1 did not convince the Examining Division, and that abstaining from discussion of inventive step on the basis of D1 (which discussion he could have undertaken independently of his opinion on the citability of D1) was a risk if his primary argumentation was not accepted. It could not be expected from the Examining Division that a further communication would be issued on a subject it had already dealt with.

3.5 The Appellant further argues that, after expiry of the time limit set on the second communication of the

Examining Division, he would have expected, if not a further communication, then at least to have his application deemed to be withdrawn (Article 96(3) EPC) instead of a refusal since his letter dated 19 February 1991 was not a response to the communication.

Since, in the view of the Board, the letter of 19 February 1991 constitutes a reply in the sense of Article 96(3) EPC, there is no need to discuss the question whether an Examining Division, in the case that the Applicant does not reply, has a right to refuse the application instead of communicating to the Applicant that the application is deemed to be withdrawn.

At the beginning, said letter refers "to your communication issued on 30th January 1991 pursuant to Article 96(2) and Rule 51(2) EPC". It deals with the reasoning of the Examining Division in this communication regarding the citability of D1 as an isolated document, and contains an argumentation why D1 should not be considered as prior art.

It is true that in the first paragraph of this letter is stated that "this present letter is not to be treated as a formal response to that communication", and that the letter fails to deal with the question of inventive step on the basis of D1 as prior art, so that it is not as comprehensive as it could be.

However, an argumentation against the citability as prior art of the only cited document, if successful, would certainly by itself be an effective reply to the objections of the Examining Division, so that it even cannot be regarded as evidently incomplete. In any case, Article 96(3) EPC does not require "a complete reply", but only "a reply" for avoiding the consequence of having the application deemed to be withdrawn. The

objective fact that therefore the letter, according to its content, constitutes a reply to the communication cannot be set aside by a simple request of the Appellant not to treat it as such and thus to make it null and void.

Therefore, it was correct not to treat the application as deemed to be withdrawn in the sense of Article 96(3) EPC.

Moreover, the Board does not see what the Appellant would have expected to gain if the Office had applied Article 96(3) EPC. If the Appellant had in mind then to request further processing under Article 121 EPC, this would not have changed the procedural situation except in leading to an extension of the time limit for replying to the communication of the Examining Division, which extension the Appellant could have obtained more easily by requesting it directly (since he was evidently aware of the elapse of this period).

3.6 Since the Board does not find any substantial procedural violations, as claimed by the Appellant, which might have necessitated the remittal of the case to the first instance (Article 111(1) EPC, second sentence), the main request is rejected.

4. *First auxiliary request*

4.1 Novelty

4.1.1 D1 discloses a process for producing a printing plate which comprises the steps of image-wise exposing to actinic radiation a layer of microcapsules positioned on the surface of a support for a printing plate, said microcapsules enveloping a photohardenable composition, subjecting said image-wise exposed layer on the support

for the printing plate to a rupturing force such that said microcapsules rupture and image-wise transfer said photohardenable composition to said support for the printing plate, and hardening said transferred photohardenable composition to form an ink-receptive polymer image.

While the above-mentioned features of the process according to Claim 1 are known from D1, D1 does not disclose that the layer of microcapsules is originally positioned on a support of a transfer sheet, which is then (prior to or after the image-wise exposure) assembled with the support for the printing plate, and that the transfer sheet is removed from the support for the printing plate. Moreover, D1 does not explicitly mention that the rupturing force is uniform.

D2 (cf. in particular "abstract"; column 3, lines 4, 10 to 14, and 29 to 38; column 6, lines 1 to 5; column 7, lines 12 to 14, 23 to 31, 43 to 45; column 8, lines 15 to 19; column 15, lines 54 to 58; column 18, lines 27 to 34; Claim 1 and Figures 1 to 3) discloses a process of transfer imaging wherein a transfer sheet including a support having a layer of microcapsules on the surface thereof is image-wise exposed to actinic radiation. Said microcapsules envelop a photohardenable composition. After image-wise exposure of the transfer sheet, said sheet is assembled with a support for receiving the image, whereupon a uniform rupturing force is applied and the transfer sheet is removed.

D2 does not relate to the production of printing plates, but to the direct production of images showing a visible contrast, so that the surface of the final image is not that of a printing plate support. Moreover, final hardening of the transferred photohardenable composition is not mentioned.

The process according to Claim 1 is therefore new in the sense of Article 54 EPC.

4.1.2 Apparatus Claim 12 defines essentially the same features as Claim 1. For the same reasons as given above, also the subject-matter of Claim 12 is therefore new.

4.1.3 Claim 15 is directed to a transfer sheet. The definitions of the procedure of treatment of this transfer sheet cannot define the transfer sheet itself except to the extent that it must be suitable for this treatment. The transfer sheet described in D2 has the same basic construction as the one claimed in Claim 15 (transparent support (cf. column 15, lines 54, 55), layer of microcapsules, discrete capsule walls, photohardenable composition) and is equally suitable for the said treatment.

However, the known photohardenable composition comprises a chromogenic material.

Therefore, the subject-matter of Claim 15 is also new.

4.2 Inventive step

4.2.1 Of the two documents mentioned above, D1 is considered to be the closer one to the claimed process since it also relates to the basic problem of producing printing plates. Moreover, the process according to D1 already achieves the indicated object of the present application, i.e. of making printing plates without the application of wet development baths (cf. column 1, lines 58 to 61 of the published application). When starting from D1, the remaining object therefore consists in making the process more satisfactory, which is a self-evident aim in any technical field.

4.2.2 As indicated above, for obtaining the necessary image-wise structure, D1 describes a technique which uses the image-wise illumination of a layer of microcapsules containing a photohardenable composition and applying a rupturing force. (It is self-evident - and moreover explicitly mentioned in D2, column 7, lines 27, 28 - that this rupturing force must be applied uniformly since otherwise an uneven structure would be achieved). D2 provides the idea that such an image-wise structure does not have to be produced on the final surface, but may be transferred thereto from a transfer sheet. It was obvious to apply this idea to the production of printing plates in accordance with D1 and thus arrive at the process according to Claim 1 since - apart from this idea - the two procedures are very similar: they both use layers of microencapsulated photohardenable compositions, start with image-wise exposure to actinic radiation, and end up with a structure of the photohardenable composition on the final substrate.

That D2 relates to the production of directly visible images (copies), i.e. images not requiring a further ink-applying and printing process, and consequently the photohardenable composition additionally contains a chromogenic material, would not hinder a person skilled in the art from realising the expressly mentioned fact that the hydrophobic "internal phase", i.e. the content of the microcapsules which mainly consists of a photohardenable composition, is image-wise transferred to the final substrate (cf. column 7, lines 43, 44, and column 15, lines 11, 12).

Printing and copying are closely related technical fields since they both deal with the reproduction of images and use optical methods; a person working in the

one field will keep himself informed about the developments in the other.

It was clear that the above-mentioned idea of using a transfer sheet would render the production of printing plates more versatile and would open up easier ways of illuminating the photosensitive layer.

4.2.3 The Appellant has argued that D1 resulted in a structure where the lipophilic and the hydrophilic areas are respectively defined by the content of the broken microcapsules and by the unbroken microcapsules, while according to D2 (as well as according to the present application) the unbroken microcapsules are removed from the produced structure, so that in these areas the properties of the uncovered surface are the determining factor. However, the Board is convinced that a person experienced in the fabrication of printing plates would not have seen any difficulty in taking over the latter feature from D2 since he is used to having to choose a suitable material for the printing plate support, which material then determines the hydrophilic characteristic in the corresponding part of the image (cf. the **conventional** hydrophilic printing plate support materials mentioned in the present application, column 6, second paragraph).

4.2.4 For these reasons, the Board comes to the conclusion that the subject-matter of Claim 1 according to the first auxiliary request lacks an inventive step in the sense of Article 56 EPC.

4.2.5 The same is true for the apparatus according to Claim 12 since this claim defines essentially the same features as Claim 1.

4.2.6 Claim 15 is directed to a transfer sheet which has the same construction as the one described in D2, except for the fact that the photohardenable composition does not comprise any chromogenic material (cf. paragraph 4.1.3 above). Leaving out the chromogenic material is obvious for the case that the transfer sheet is used for producing a printing plate (where no colour is required), which use is obvious for the reasons given above in paragraphs 4.2.1 to 4.2.3.

4.2.7 For these reasons, neither of the independent Claims 1, 12 and 15 according to the first auxiliary request is allowable under Article 52(1) EPC.

5. *Second auxiliary request*

Claims 1 and 12 according to the second auxiliary request are identical with those of the first auxiliary request. This request is therefore also not allowable.

6. *Third and fourth auxiliary requests*

Claims 1 and 12 of these requests and Claim 15 of the third auxiliary request contain the additional feature that the support of the printing plate accepts water and rejects ink. This feature, however, cannot render the claimed subject-matter inventive since - as already mentioned above in paragraph 4.2.3 - choosing a hydrophilic (and consequently ink rejecting) support results necessarily from the use, shown to be non-inventive, of the image transfer procedure according to D2 for the production of printing plates and was a conventional task for a skilled person.

The subject-matter of Claims 1 and 12 according to the third and fourth auxiliary requests and of Claim 15 according to the third auxiliary request is therefore

also not inventive, and the corresponding requests are consequently not allowable.

7. *Fifth and sixth auxiliary requests*

Claims 1 and 11 of these requests and Claim 14 of the fifth auxiliary request contain the additional feature that the support for the printing plate is made of aluminium, anodised aluminium, oxidised aluminium, stainless steel, cobalt-plated steel, copper-coated steel, chrome-plated steel, or copper-coated epoxy.

In Claim 14 of the fifth auxiliary request, this additional feature does not contribute in any way to the definition of the claimed transfer sheet since it relates to the printing plate which does not form part of the transfer sheet (cf. the similar considerations in paragraph 4.1.3 above). Regarding Claims 1 and 11: That a person skilled in the art will be able to choose a suitable hydrophilic printing plate support, has already been stated in paragraph 4.2.3 and paragraph 6. Choosing the specific materials mentioned above is not inventive since these materials are conventionally used in the art, as is confirmed by the Appellant himself in the description of the present application (cf. column 6, lines 8 to 21).

The subject-matter of Claims 1 and 11 according to the fifth and sixth auxiliary requests and of Claim 14 according to the fifth auxiliary request is therefore also not inventive, and the corresponding requests are consequently not allowable.

8. Although obviousness of the subject-matter of one independent claim is already sufficient for rendering the respective request unallowable, the Board has also considered the dependent claims in order to see whether

they contained any inventive features which could have been introduced into the independent claims to render them allowable.

The feature of Claim 4 (numbering according to the first auxiliary request) has already been dealt with in connection with the fifth and sixth auxiliary requests.

The features of Claims 2, 3, 6, 7, 13 and 14 (numbering according to the first auxiliary request) are known from D2. The features of Claims 5 and 8 appear to be related to an obvious alternative to and an obvious embodiment of the examples given in D2. The final step of hardening the transferred photohardenable composition is known from D1, according to which document the composition is uniformly exposed to light (Claim 11). Using heat (and consequently a thermal initiator) (Claims 9 and 10) for such a hardening operation appears to be a usual alternative.

Therefore, inventive features are not apparent in the dependent claims either.

9. Since the question of inventive step of the claimed subject-matter has already been examined by the Examining Division in the knowledge of documents D1 and D2, and since no substantial procedural violation can be found (cf. main request of the Appellant), the Board sees no reason to remit the case to the Examining Division (Article 111(1) EPC).
10. Since none of the requests of the Appellant is allowable, the decision to refuse the application has to be confirmed.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

E. Turrini