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D E C I S I O N
of 20 December 2000

Case Number: T 0749/97 - 3.5.1

Application Number: 88107249.0

Publication Number: 0291777

IPC: H04N 1/32

Language of the proceedings: EN

Title of invention:
Copier with an optional facsimile function

Patentee:
Ricoh Company, Ltd

Opponent:
Océ-Nederland B.V.
Manfred Kirchhoff technische Beratung

Headword:
-

Relevant legal provisions:
EPC Art. 56, 116(1) second sentence

Keyword:
"Inventive step - no"
"Further oral proceedings (refused)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0749/97 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 20 December 2000

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 5 May 1997 revoking European patent No. 0 291 777 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: P. K. J. van den Berg

Members: R. R. K. Zimmermann
V. Di Cerbo

Summary of Facts and Submissions

First-instance proceedings

I. The appeal concerns European patent No. 0 291 777. The patent was granted to the appellant on the basis of European patent application No. 88107249.0 and took effect on 22 March 1995. Priority was claimed from Japanese applications, the earliest filed on 9 May 1987. Claims 1 and 2 of the patent as granted read as follows:

"1. A combined copier/facsimile apparatus which is selectively operable in a facsimile mode or a copy mode, said apparatus comprising:
a facsimile function section including a memory (SAF unit) for storing image data to be transmitted to a receiving terminal and for storing image data received from a remote transmitting terminal,
a control section (main board) (fig. 6) for controlling the copy operation and the facsimile operation of the apparatus, said control section being formed to receive an information signal (PRINT REQUEST, fig. 18) indicating a facsimile reception and being adapted to respond to the receipt of said information signal by storing the image data received from a remote transmitting terminal and by causing a transition from the copy mode to the facsimile mode in order to print out the stored image data if a copy mode function has not been initiated within a predetermined period of time after the last copy mode operation."

"2. An apparatus as claimed in claim 1, wherein said control section is also formed such that a copy mode is automatically set up at the end of print-out of the

facsimile data, if no manipulation of the apparatus is performed during the print out of the facsimile data."

II. Against the patent, the respondents filed oppositions on 20 December 1995 and 22 December 1995, respectively, requesting revocation of the patent in its entirety. As grounds of opposition, they invoked lack of novelty and inventive step in view of prior art evidenced *inter alia* by the following documents:

C1: US-A 4 623 244, publ. 18 November 1986

C2: DE-A-35 26 886, publ. 6 February 1986

C6: US-A-4 633 405, publ. 30 December 1986

C7: GB-A-2 166 619, publ. 8 May 1986

C8: JP-A-59 223 463, publ. 15 December 84 (filed as translation in English)

III. The opposition division responsible for the examination of the oppositions revoked the patent; the decision was posted in writing on 5 May 1997. According to the decision, claim 1 as granted as well as the claims as amended in the course of the first instance proceedings did not comply with the requirement of inventive step in the light of documents C1, C6, C7 and C8. The difference to the closest prior art (alternatively document C1 or document C7) was seen in features of controlling the transitions between the different operating modes of the apparatus which resulted in an obvious manner from the prior art.

Appeal proceedings

IV. Against this decision the appellant filed a notice of appeal on 4 July 1997, requesting complete reversal of the decision. The appeal fee was paid the same day; the grounds of appeal were subsequently filed on 5 September 1997.

V. With letter dated and received on 23 April 1998, the appellant filed four sets of amended claims under the title "auxiliary requests", claims 1 of the "third auxiliary request" and "fourth auxiliary request" were amended by appending the following text passages at the end of claim 1 as granted:

third auxiliary request (23 April 1998): "and if the printer is ready and has not been operated for the predetermined period of time, whereas the transition to the facsimile mode is inhibited, when the printer is not ready"

fourth auxiliary request (23 April 1998): ", wherein a key counter removably mounted on said apparatus and a mounting section for mounting said key counter are provided so that, even when said key counter is not mounted, facsimile data received by said facsimile function are printed out at the end of reception of the facsimile data"

VI. In public oral proceedings held before the Board of appeal on 27 January 2000, the matters in issue were discussed. The appellant submitted further sets of amended claims as first, fourth and fifth auxiliary request, respectively, which resulted in the following versions of claim 1:

According to the first, fourth and fifth auxiliary

request, the text ", when the apparatus is in the copy mode," was to be inserted into the last paragraph of claim 1 as granted between the word "and" and the feature "by causing a transition from ...". In addition following text portions should be appended at the end of the respective claim 1:

first auxiliary request: ", wherein, if the transition for the print out of the received data has occurred, the copy mode is restored as stand-by mode"

fourth auxiliary request: "wherein, if the apparatus is in the facsimile mode and has not been manipulated for a predetermined time, the copy mode is reset"

fifth auxiliary request: ", wherein said control section is also formed such that if the apparatus was not initially in the facsimile mode and if the apparatus is not in the facsimile mode, the setting of the copy mode is not performed, and such that if the apparatus was initially in the copy mode and is not in the copy mode, the copy mode is automatically reset, if the apparatus has not been manipulated for more than a predetermined time".

Moreover, the appellant requested referral of the following question to the Enlarged Board of Appeal: "If the Board should reject the 1. and 2. auxiliary request, the Enlarged Board of Appeal should be confronted with the legal question whether a new claim is deemed to be a late submission, if the new claim only includes an additional feature which 1. was already part of an auxiliary request filed in time and which 2. was also part of the granted subclaims, wherein in particular the additional feature clarifies

the main claim".

At the end of the oral proceedings, the Board declared that the proceedings would be continued in writing on the basis of the appellant's requests as determined in the oral proceedings and that the parties are given an opportunity to comment in writing within a time limit set up by the Board.

In the further course of the appeal proceedings the parties essentially confirmed their requests and made observations expressing their views.

The decision of the Board is accordingly based on the following requests and submissions.

Requests

VII. According to the appellant the decision under appeal be set aside and the patent be maintained as granted (main request), or on the basis of the following auxiliary requests:

first auxiliary request as submitted in the oral proceedings;

second auxiliary request having an independent claim comprising the combination of the features of claims 1 and 2 of the patent as granted;

third auxiliary request: referral to the Enlarged Board of Appeal of the question submitted in the oral proceedings;

fourth auxiliary request as submitted in the oral

proceedings;

fifth auxiliary request as submitted in the oral proceedings;

sixth auxiliary request corresponding to the third auxiliary request submitted on 23.4.1998;

seventh auxiliary request corresponding to the fourth auxiliary request submitted on 23.4.1998.

Oral proceedings are requested, in particular with regard to "subject-matter of the auxiliary requests not discussed in the previous oral proceedings".

VIII. According to the respondents the appeal be dismissed and the revocation of the patent as a whole be confirmed.

Oral proceedings are requested by one of the respondents in case the Board intends to decide to the contrary.

Arguments

IX. The appellant identified various differences involving an inventive step, between the alleged invention and the prior art documents cited.

Document C1 considered to form the closest piece of prior art did not disclose a combined copier/facsimile apparatus, although referring to a facsimile mode, since the term "facsimile" as used in 1976, the publication year of document C1, meant producing pictures by means of a scanner whereas in the present

patent the term implies compliance with a facsimile transmission standard set up for facsimile data transmission via modems and public switched networks.

Furthermore, the mode scheme in document C1 was complex, i.e. it included several levels of foreground and background modes, whereas according to present claim 1 this scheme was a simple one, which meant that there was only a transition from an inactive foreground copy mode to an active background facsimile mode. Actually, none of the cited prior art documents disclosed a mode control scheme anticipating such a simple scheme as proposed by the present patent.

Moreover, the timeout control defined in claim 1 was different from similar control features disclosed in documents C1 and C8. In document C1, the timeout did not protect but, to the contrary, it served to initiate the copy mode. In document C8, the timeout control switched the apparatus to the low priority copy mode so that the control scheme in this document led away from the teaching of the present patent; besides, it was also not compatible with the control scheme disclosed in document C1.

Finally, in the apparatus as claimed the copy mode was the foreground mode which was only left for the purpose of printing data previously received and stored. Therefore, the facsimile data are claimed to be received during copy mode operation, whereas in document C1 the apparatus had to be switched first into the print mode before external text data can be received, i.e. this prior art apparatus was not available for copying operation during facsimile reception.

First, second, fourth and fifth auxiliary requests emphasized these aspects of differences in the mode control schemes. Regarding the sixth auxiliary request, document C1 did not disclose inhibition of mode transition for a situation as presumed in claim 1. Regarding the auxiliary request 7, the respondents had not substantiated their allegation that printing out the facsimile data received at the end of the reception independent of the presence of a key counter was obvious; this feature was not disclosed in any of the prior art documents cited against the patent under dispute.

Regarding prior art documents C2, C7 and C8, the respondents took the features of mode control out of the technical context in which they were disclosed therein: the control schemes proposed in these documents were too different from each other and from the scheme proposed in the patent under dispute as to be obvious to a skilled person to combine them along the line suggested by the present invention.

X. The respondents disagreed already for the reason that the appellant had based its arguments on features which the claims in question did not include.

Document C1 was not restricted to a word processing environment but included the facsimile transmission via communication networks. The image data were received and stored prior to printing. Furthermore, the print mode was reactivated after a predetermined time had elapsed since the last copy was made. Therefore, the subject-matter of claim 1 of the main request lacked novelty and, according to one of the respondents, inventive step.

In addition, storing and timeout functions were obvious features and anticipated by documents C7 and C8, respectively. The combination of these two documents alone would render the claimed subject-matter obvious.

Moreover, lack of inventive step would also result from the combination of documents C2 and C7: document C2 disclosed a timeout control for a copy mode to print mode transition whereas document C7 described storage of faxdata allowing to perform data reception and copy jobs simultaneously.

Regarding the first, second, fourth, fifth and sixth auxiliary requests the additional features in claim 1 of these requests were obvious to the skilled person if he takes into account document C1 and, for the first three auxiliary requests, document C8. Claim 1 of the seventh auxiliary request was rendered obvious by the combination of documents C1 and C6, in particular since document C6 disclosed a removable key counter for use with a copying machine.

Reasons for the Decision

Admissibility of appeal and admission of requests

1. The appeal complies with the requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC and is thus admissible. The requests submitted by the appellant have all been admitted by the Board to the appeal proceedings in exercise of its discretion under Article 114(2) EPC.

Inventive step

2. Lack of inventive step (Articles 100(a), 56 EPC) is an objection raised before the first instance as ground of opposition against the patent under dispute and maintained in the appeal proceedings against the amended claims. According to this requirement the invention, in the light of the prior art, should not be obvious to the skilled person.

3. Document C1 was cited as a piece of prior art relevant for assessing inventive step, a view apparently shared in the appeal proceedings by the appellant and the respondents. Indeed document C1 describes a combined copier/printer having various features in common with the claimed copier/ facsimile apparatus and discloses a control scheme for governing the transition between different machine modes which is more clearly and closely related to the alleged invention than the other prior art documents on file. The Board, therefore, considers document C1 as the closest piece of prior art and as an appropriate starting point for assessing inventive step.

4. It is beyond dispute that the embodiment described in detail in document C1 with reference to the drawings has the following features in common with claims 1 of the appellant's substantive requests: a combined copier/printer apparatus (see document C1, Figures 1 and 2) which is selectively operable in a print mode or a copy mode, said apparatus comprising a print function section (SCP, 12, 16, 17) including a unit (17; 17M, TP) for receiving data from a remote transmitting terminal, a control section (15, 60, 61) for controlling the copy operation and the print operation of the apparatus, said control section being formed to

receive an information signal (print request over line 242, see Figure 14) indicating a print reception and being adapted to respond to the receipt of said information signal by causing a transition from the copy mode to the print mode in order to print out the data if the copy mode is inactive, i.e. when no copies are actually being produced by the copy production portion 13 or being transported to output portions 14A, C (see column 25, lines 28 ff.).

The further examination of the appeal, however, requires the individual consideration of appellant's various requests.

Main request

5. The subject-matter of claim 1 (main request) is at best distinguished from the closest prior art C, by the following differences cited as features A, B, C, and D:

(A) the copier/printer apparatus is a copier/facsimile apparatus, i.e. the print mode includes a facsimile mode in which the image data are facsimile data

(B) a memory (SAF unit) is provided for storing image data to be transmitted to a receiving terminal and for storing image data received from a remote transmitting terminal

(C) the control section is adapted to respond to the receipt of the information signal by storing the image data received from the remote transmitting terminal

(D) the transition from the copy mode to the facsimile mode is caused if a copy mode function has not been initiated within a predetermined period of time after the last copy mode operation.

6. Regarding feature A, it is first to be noted that in view of the printing function normally available in facsimile machines such a machine may indeed be considered as a printer having the additional functionality of a facsimile system.

The print mode described in document C1 actually encompasses a plurality of different operating modes corresponding to the different image sources which are associated to the copy production machine CPP and selectable in the print mode for transmitting the image data to the image generator 12C (see for example column 2, lines 12 ff. and column 49, lines 39 ff.). The image data are all processed similarly so that document C1 uses the generic term "print mode" for all these operating modes.

The external image signals are received via a modem 17M from a telephone line TP (Figure 14). This embodiment, however, is described on the basis of a pure word processing environment so that the "image" signals are in fact text data as pointed out by the appellant.

Therefore, the technical problem underlying feature A is to be seen in an improvement of the functionality of the apparatus regarding the number and kind of image sources which can be connected to the copier/printer apparatus via modem 17M and telephone line TP, i.e. essentially via a public telecommunication network.

Although the word processing application is described in detail, the document explicitly indicates that the copier/printer apparatus may also be used for "image transfer such as facsimile" (column 52, lines 41 ff.). Furthermore, "analog (facsimile) signals" may be printed out, dynamically interleaved with word processing signals (column 55, lines 34 ff.).

This information is a clear hint to add a facsimile function so that the improvement of the prior art copier/printer apparatus according to feature A would be considered obvious by the skilled person.

The appellant argued that in view of the filing date of document C1 the term "facsimile" should have a different meaning than in the patent under dispute. However, in 1977 when document C1 was filed, the characteristics of the CCITT operating standards Group 1 (in 1971) and Group 2 (by 1976) for facsimile machines had already been defined. The following technical development including the introduction of digital techniques and of the store-and-forward concept for handling facsimile data did not change the general technical meaning of this term. There is also no indication that in present claim 1 or elsewhere in the patent under dispute the term "facsimile" has been given a special sense distinct from its normal technical meaning.

7. Features B and C (see above) imply a store-and-forward handling of the facsimile data which was at the priority date of the patent already a well known concept in the field of telecommunication. Document C7, for example, explicitly describes this concept on page 1, lines 29 ff. as a possibility for increasing

communication speed and for coordinating communication, decoding and recording speeds in facsimile systems. Referring to a combined copier/facsimile apparatus, the document identifies as an additional problem that the image data could not be received during copying operation. All these problems, however, could be solved by temporarily storing the image data and, on the reception side, by printing out the stored image data at a proper timing after completion of a copying operation which coincides with the facsimile reception.

Reading document C7 it becomes evident to the skilled person that such problems are also relevant in the word processing context of the copier/printer apparatus of document C1 and that these problems may be solved as suggested in document C7, namely by temporarily storing the image data before receiving or transmitting the data. In view of this document, modifications of the prior art apparatus according to features B and C are therefore obvious to the skilled person.

The appellant disputed that it would be obvious to combine the various documents because of the differences and complexity characterizing the control schemes and operating modes of the prior art machines.

The above considerations actually use general technical concepts only, which are disclosed already in the introductory part of document C7. Such a reasoning is indeed justified and necessary since the skilled person is capable, in studying a whole document, to distinguish general technical concepts and ideas from technical details given in the document for describing a particular embodiment and to apply such general technical concepts and ideas in a straightforward

situation for solving a particular technical problem without exercising an inventive step.

8. In the light of document C1 the problem underlying feature D (see above) resides in the difficulty to determine when the copy mode is "inactive", which is the explicit condition disclosed in document C1 for the transition from the copy mode to the print mode (column 25, lines 24 ff.). Feature D defines in fact a solution to this problem, however, a solution which is a generally known concept for ending or interrupting a machine state which has become inactive. Document C1 itself proposes timeout as a possibility for deciding when the copier has become inactive to interrupt the copy mode job and to return to a waiting print job (column 41, lines 54 ff.). It is obvious to the skilled person to apply the same solution for the same purpose when the copy mode is the initial mode, stand-by mode or current mode where a print job is not waiting for completion. Therefore, feature D does not imply any inventive contribution to the prior art.

9. The appellant argued that contrary to the alleged invention the apparatus of document C1 did not receive the external text data when it is in the inactive foreground copy mode but only during the print mode after the mode transition. However, document C1 does not indicate what happens with the image data within the modem 17M. Storage of image data for example in the modem 17M during the copy mode is neither explicitly nor for technical reasons excluded, that means the technical teaching of document C1 is not incompatible with the store-and-forward handling of facsimile data. Document C1 only excludes that the image data received from modem 17M and reader/recorder 16M are processed

simultaneously.

In addition, neither of the appellant's requests is directed to a claim 1 which defines such a feature. In fact, a timeout according to the claimed invention could have occurred long before the arrival of a print request, in which case the transition from the then inactive copy mode to the print mode is caused instantly and the storage of facsimile data may have to happen during the print mode (note that according to claim 1, data storage and mode transition are effected in response to the receipt of the print request). Said argument submitted by the appellant is thus not convincing.

10. Finally, it is noted that the technical problems solved and the effects achieved by features A, B, C, and D are in fact technically unrelated with respect to each other, at least at the level of abstraction presented by the claims, so that the combination of said features does not result in any additional combinatorial effect nor in any other inventive contribution. Therefore, even the combination of these features does not involve an inventive step.

11. Since for these reasons the subject-matter of claim 1 lacks inventive step, the main request is not allowable.

First auxiliary request

12. The feature "when the apparatus is in the copy mode", which is also in the fourth and fifth auxiliary requests, is known from said embodiment of the prior art apparatus of document C1: according to column 25,

lines 24 ff., the copy mode, whether active or inactive, is the foreground mode before a print request initiates a transition to the print mode.

13. The further feature added to claim 1 is also anticipated by document C1: in column 25, lines 37 f., for example, the control feature of switching the apparatus back into the copy mode when the print mode becomes inactive is explicitly disclosed. This concurs with the hint given in line 25 that the copy mode is "the most convenient mode insofar as operators are concerned" which implies as an advantage to reset, whenever possible, the print mode to the copy mode or to use the copy mode for stand-by.

Since, therefore, the subject-matter of claim 1 of the first auxiliary request does not add anything new to said embodiment described in document C1, the claim does not conform to the requirement of inventive step.

Second, fourth and fifth auxiliary requests

14. Claims 1 of the second, fourth and fifth auxiliary requests define essentially the same technical features of the mode control. This may be not *prima facie* evident for the fifth auxiliary request since the first half of the appended text seems to define an additional control feature. However considering that copy mode and facsimile mode are the only modes defined in the claim, it is clear that this feature is equivalent to the statement "if the apparatus was initially in the copy mode and if the apparatus is in the copy mode, the setting of the copy mode is not performed". It goes without further reasoning that such a feature - if technically meaningful at all - does not

invoke an inventive step.

Claims 1 of these requests include the further feature that the "copy mode is automatically set up ... , if no manipulation of the apparatus is performed during the print out of the facsimile data" (second auxiliary request, and similar formulations in the other claims), however, without defining what the apparatus does and what not when it has been manipulated during the print out. Therefore, any control scheme which sets up the copy mode automatically after the print mode has become inactive (see for example document C1, column 25, lines 24 ff.) could formally be considered to satisfy this implication and thus to anticipate said feature.

Moreover, document C1 discloses that the operator, by activating read switch 155 on control panel 52 or by inserting magnetic record cards, can go from a copy mode to a word processing input mode or even to a dedicated print mode (see for example column 52, lines 63 ff.), thereby inhibiting automatic reset to copy mode by such manipulations of the copier/printer apparatus.

Apparently, claims 1 of the second, fourth and fifth auxiliary request do not imply any technical measure which goes beyond the features of the control scheme disclosed in document C1. These claims do thus not provide an inventive contribution to the prior art so that said auxiliary requests are not allowable either.

Sixth auxiliary request

15. Inhibiting copying or printing operations when the printer is not ready is certainly an obvious concept

for printing and copying machines. Recovery from such a fail condition, produced for example by an empty paper supply, normally restores the former operating mode, since otherwise the print or copy job could not be completed. Inhibiting the transition to a different mode other than for recovery purposes is thus a logical and obvious consequence.

Document C1, for example, explains in column 46, lines 35 ff. that "jam circuits 200 supply a 'paper path clear' signal over line 204 to both A1 and A2 input portions of A0 185 for inhibiting the interrupt until the paper path ... is clear", whereby the A1 and A2 portions serve to switch from the print mode to the copy mode. In column 54, lines 61 ff. the document indicates that "the interruption of the print mode by the copy mode and vice versa illustrates dynamic interleaving of image sources for producing diverse copies of the copy and print type with a single CPP 13" and continues in column 55, lines 22 ff. by indicating that "of course, in all these dynamic interleaving design decisions, jam recovery aspects must be fully considered". The Board considers this an explicit hint to have jam detection and recovery provided also in the copy mode. Using a 'paper path clear' signal also in the copy mode for inhibiting mode transition, like in the print mode, is then an obvious detail for achieving complete job recovery. Document C1 thus confirms the above result.

It follows that for lack of inventive step in claim 1 the sixth auxiliary request is not allowable.

Seventh auxiliary request

16. The seventh auxiliary request introduces features of a removable key counter which according to the specification of the patent under dispute belongs to the copier and has nothing to do with the transmission of facsimile data (column 16, second paragraph). A removable key counter in this sense is known from document C6 according to which the key counter serves to permit operation of the copying machine. When the user withdraws the key device the "operating conditions change to the standard conditions" of the copying machine (see document C6, abstract).

With the combined copier/printer apparatus of document C1 it is obvious to provide a similar key counter system for restricting the access of users to the machine and for billing purposes, in particular since document C1 already provides an image counter for billing purposes (column 5, lines 68 ff.) which however is not capable to restrict the access to the machine.

In providing such a key counter, inevitably the problem arises which type of print and copy jobs need permission and which do not. This problem, however, is a purely administrative one which does not necessarily involve any technical considerations and which has to be solved on a purely administrative non-technical level. Such a purely administrative problem and solution is not capable to provide an inventive and thus technical contribution to the prior art. Given that the administrative solution is only to restrict the copying operations by means of a key counter, the skilled person would consider it an obvious technical feature to allow the print out of facsimile data

received even when said key counter is not mounted. Therefore, the seventh auxiliary request does not add any non-obvious, technical feature; claim 1 of this request does thus not comply with the requirement of inventive step.

17. In summary, none of the substantive requests submitted by the appellant is allowable.

Third auxiliary request

18. The third auxiliary request asks for referral of a legal question to the Enlarged Board of Appeal under the condition that the Board rejects the first and second auxiliary request in the context of the late submission of these requests. Since the Board admitted all the requests submitted in the oral proceedings of 27 January 2000 to the appeal proceedings, this request has become irrelevant.

Requests for further oral proceedings

19. The appellant, and one of the respondents, submitted requests for further oral proceedings as a subsidiary measure if the Board intends to decide against them. The appellant wished to be heard with regard to "the subject-matter of the auxiliary requests not discussed in the previous oral proceedings".

According to Article 116(1), second sentence EPC, such a request may be rejected where the parties and the subject of proceedings are the same. In the present case neither the parties, nor the substantive requests nor the substantive issues which formed the subject-matter of the oral proceedings of 27 January 2000 have

changed since then so that the parties had been fully heard with their case before the Board. Moreover, the parties have made ample use of the additional opportunity to submit further comments and observations in writing within the time limit as set up by the Board in the oral proceedings.

There is also no substantive issue left which would make a further hearing necessary for deciding the present case. For these reasons, the parties' requests for oral proceedings are rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Kiehl P. K. J. van den Berg