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D E C I S I O N
of 14 February 2003

Case Number: T 0245/99 - 3.2.5

Application Number: 90915213.4

Publication Number: 0494939

IPC: B41J 2/415

Language of the proceedings: EN

Title of invention:

Method to improve printing quality of grey scales and colour
for printers

Patentee:

ARRAY PRINTERS AB

Opponent:

Agfa-Gevaert N.V.

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"Amendment (main request and auxiliary request, inadmissible)"

Decisions cited:

T 0003/90

Catchword:

-



Case Number: T 0245/99 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 14 February 2003

Appellant: ARRAY PRINTERS AB
(Proprietor of the patent) Önnereds Brygga 13
S-421 57 Västra Frölunda (SE)

Representative: Hammond, Andrew
Ström & Gulliksson IP AB
Sjöporten 4
S-417 64 Göteborg (SE)

Respondent: Agfa-Gevaert N.V.
(Opponent) Septestraat 27
B-2640 Mortsel (BE)

Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 28 December 1998
revoking European patent No. 0 494 939 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: W. Moser
Members: P. E. Michel
H. M. Schram

Summary of Facts and Submissions

- I. The appellant (patentee) lodged an appeal against the decision of the Opposition Division revoking patent No. 0 494 939.

Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty (Article 54 EPC) and inventive step (Article 56 EPC)).

The Opposition Division held that the subject-matter of claim 1 of the sole request of the appellant did not involve an inventive step

- II. The appellant requested that the decision under appeal be set aside and that the patent be maintained either on the basis of claims 1 to 4 filed as main request on 23 September 2000, or on the basis of claims 1 and 2 filed as auxiliary request on 23 September 2000.

The respondent (opponent) requested that the appeal be dismissed.

- III. Claim 1 of the main request of the appellant reads as follows:

"1. Method for improving the quality of printing and increasing printing speed in a printing device when producing halftone images on an information carrier using printer means comprising a toner carrier, an electrode matrix and a background electrode, the images being created by means of cells, each cell consisting of a variable number of dots (7), the method comprising the steps of:

- bringing an information carrier into electrical

- cooperation with said electrode matrix, said matrix comprising electrodes (5a, 5b, 6a, 6b) connected to at least one voltage source having controllable voltage level,
- by varying said voltage level, at least partly opening and closing passages through the electrode matrix such that an electrical field acting directly between said toner carrier and said background electrode causes pigment particles to be attracted onto said information carrier to produce a dot,
 - each dot being produced with variable colour value and size by applying different voltages to said electrodes to open and close passages with different sizes,
 - each dot in said cell is individually controllable with respect to the colour value and dot size so that the dots form a preselected pattern in each cell, said pattern varying with respect to the number of dots, colour and the dot size, and
 - varying the intensity of said field acting between said toner carrier and said background electrode for changing the coupling between the dot size and the colour value."

Claim 1 of the auxiliary request of the appellant is identical to claim 1 of the main request of the appellant.

- IV. Whilst oral proceedings, requested by both parties on an auxiliary basis, had been appointed to take place on 24 September 2002, both parties subsequently informed the Board in writing on 22 August 2002 and 6 September 2002 respectively, that they would not be represented at the oral proceedings. In a communication dated

27 September 2002, the Board stated that: "According to the established jurisprudence of the Boards of Appeal (cf., in particular, decision T 3/90 [OJ EPO 1992, 737]), these statements are to be treated as equivalent to a withdrawal of the present auxiliary requests for oral proceedings."

The Board further indicated that neither the main nor the auxiliary request of the appellant appeared to comply with the requirement of Article 123(2) EPC. A period of two months was set for the filing of observations on this matter. No such observations were received.

Reasons for the Decision

1. Main request of the appellant

Method claim 1 includes the feature of "varying the intensity of said field acting between said toner carrier and said background electrode for changing the coupling between the dot size and the colour value".

However, as was stated in the communication of the Board dated 27 September 2002 (cf. point IV above), there is no support for this feature in the application as filed, which does not refer to a field acting between the toner carrier and the background electrode. In fact, referring to page 6, line 35 to page 7, line 1 of the published version of the application as filed (WO91/04864), it is stated that "By changing eg. the intensity of field between the information carrier and the developing roller ... the coupling between dot size and blackness can be changed". Furthermore, whilst it

is true that Figures 1, 3 and 5 of the drawings show the characteristics of dots within a passage defined by the electrodes of the matrix, it is not clear what conclusions can be drawn from these illustrations as to the relationship between the toner carrier and the background electrode.

The patent has thus been amended so as to contain subject-matter which extends beyond the content of the application as filed, so that the amendments are not allowable in view of the requirements of Article 123(2) EPC.

2. *Auxiliary request of the appellant*

Claim 1 of the auxiliary request of the appellant is identical to claim 1 of the main request of the appellant. The amendments included in the auxiliary request are thus also not allowable in view of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

N. Maslin

W. Moser