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D E C I S I O N
of 5 February 2002

Case Number: T 1081/99 - 3.5.1

Application Number: 94112840.7

Publication Number: 0639027

IPC: H04N 1/46

Language of the proceedings: EN

Title of invention:
Color film analyzing method and apparatus therefore

Applicant:
FUJI PHOTO FILM CO., LTD.

Opponent:
-

Headword:
Film analyzing method/FUJI

Relevant legal provisions:
EPC Art. 52(1), 56

Keyword:
"Inventive step - no"

Decisions cited:
-

Catchword:
-

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Case Number: T 1081/99 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 5 February 2002

Appellant: FUJI PHOTO FILM CO., LTD
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 18 May 1999 refusing European patent application No. 94 112 840.7 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. Randes
P. Muehlens

Summary of Facts and Submissions

I. This appeal is against the decision by the Examining Division to refuse European patent application 94 112 840.7 on the grounds that the subject-matter of claim 1 lacked inventive step having regard to the following document:

D1: US-A-4 364 084.

II. The set of claims decided on by the Examining Division had three claims, claims 2 and 3 being dependent on claim 1. Claim 1 had not been amended in Examination proceedings and reads as follows:

"1. A video-type color film analyzer (10,32) for displaying simulated color print images of a plurality of picture frames of a color film in a matrix pattern on a video image display device, said analyzer comprising:

image specifying means (40) for specifying one of said color images which need not be printed; and

means for displaying an indication mark (49) which overlaps part of said specified color image, said mark indicating that said specified print is not to be printed."

III. In its decision the Examining Division argued that D1 (see column 3, lines 27 to 43 and column 5, line 66 to column 6, line 8) disclosed a video-type colour film analyzer (1-7) comprising image specifying means (7) for specifying one of said colour images which need not be printed. The subject-matter of claim 1 consequently

differed from the disclosure of D1 in means for displaying an indication mark which overlapped part of said specified colour image, said mark indicating that said specified print was not to be printed. The Examining Division found that at the priority date displaying overlapping indication marks was common general knowledge in the image processing art. Hence the difference features amounted to obvious measures lacking inventive step.

IV. In the statement of grounds of appeal the Appellant requested that the decision be set aside and a patent be granted, arguing that in D1 the "non-print" information was not displayed. In contrast, the invention clearly marked images to be discarded as "non-print" to avoid confusion with "print" images. The Appellant also made an auxiliary request for oral proceedings.

V. In an annex to a summons to oral proceedings the Board indicated its preliminary opinion that claim 1 lacked inventive step, particularly since *inter alia* the following document, cited in the European Search Report, related to displaying an image overlaid with an indication mark:

D3: EP-A-0 130 301.

VI. Oral proceedings were held before the Board on 5 February 2002 during which the Appellant requested grant on the basis of claims 1 to 3 as set out in the annex to the decision under appeal (see point II above) or, as an auxiliary request, on the basis of claim 1 filed in the oral proceedings and claim 2 as set out in the annex to the decision under appeal.

Claim 1 according to the auxiliary request differs from that of the main request (see point II above) merely in that the following expression has been added at the end: "wherein the indication mark (49) is displayed at the centre of the specified colour image."

In support of the main request the Appellant argued essentially that in D1 the user instructed the colour film analyzer not to print a particular image by selecting the "non" key on the keyboard. Although D1 mentioned displaying adjusted image parameters on the screen, it was not explained how this was done. In particular there was no disclosure of a "non-print" indication or of images being overlaid with such an indication. The inventors had recognised that the apparatus known from D1 suffered from the problem that the user tended to waste time by inadvertently returning to "non-print" images, thus reducing the efficiency of the inspection process. This problem was not known in the prior art. The problem was solved according to claim 1 by marking those images on the screen which where not to be printed with an overlapping indication mark. Such a solution was not taught by D3, since it concerned a cursor rather than an indication mark. A cursor differed from an indication mark in that a cursor could be freely positioned whilst an indication mark could only occupy a limited number of predetermined locations. A cursor also indicated an entry point for data whilst an indication mark changed the meaning of the image beneath. Furthermore, whilst a screen could only have one cursor, it could have many indication marks. In D3 the highlighting of the "Load" command in figure 11 amounted to a parameter change rather than an indication mark. Hence even the combination of D1 with

D3 did not yield the subject-matter of claim 1.

As to the auxiliary request, the Appellant argued that the amended wording emphasized the distinction between the cursors known in the prior art and the claimed indication mark.

VII. At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

1. *Admissibility*

The appeal meets the requirements set out in Rule 65(1) EPC and is therefore admissible.

2. *Amendments*

The feature added to claim 1 of the auxiliary request is derivable from column 15, lines 45 to 47 of the published application and Figure 5 as originally filed, which shows an indication mark 49 in the centre of the image. The Board is consequently satisfied that claim 1 of the auxiliary request complies with Article 123(2) EPC.

3. *Novelty*

D1 forms the closest prior art. In view of column 3, lines 23 to 25, D1 discloses all images - "print" and "non-print" - being displayed on the colour video monitor 6 shown in Figure 1.

As to the main request, the Board sees no reason to differ from the Examining Division's view that the subject-matter of claim 1 differs from the disclosure of D1 in means for displaying an indication mark which overlaps part of said specified colour image, said mark indicating that said specified print is not to be printed.

As to the auxiliary request, the Board notes that, since D1 does not disclose an indication mark, the subject-matter of claim 1 differs from the disclosure of D1 not only in the above difference features, but also in the indication mark being displayed at the centre of the specified colour image.

The subject-matter of claim 1 according to the main and auxiliary requests is consequently novel, Articles 52(1) and 54(1 to 2) EPC.

4. *Inventive step (main request)*

The Board agrees with the Appellant that the objective technical problem can be regarded as improving the efficiency of the inspection process. The Board however takes the view that this problem would become immediately apparent in the normal use of the apparatus known from D1. Figure 4 shows that the user can select any image for correction using the "display address input keys" on the keyboard (column 5, lines 66 to 68). Hence the images can be corrected in any order. D1 also provides no reminder to the user of which images are not to be printed. In the light of these two facts it is inevitable that the user would sometimes forget that an image had already been designated "non-print" by pressing the "non" key (column 6,

lines 6 to 8 and column 7, lines 50 to 52) and inadvertently return to it, thus reducing the efficiency of the inspection process. Hence no invention can be seen in recognising the objective technical problem.

As to the solution, the Board holds that in accordance with normal practice it would readily occur to a skilled person to use indication marks for identifying passages of text or images to be deleted, for example in that such items are simply crossed out in paper drafts. Nor can the technical realisation of corresponding indication marks on displays be considered to be inventive, since means for providing on-screen indication marks were known at the priority date. D3, for instance, shows (Figure 11) a computer screen at the bottom of which is a menu of commands; see page 13, lines 2 to 3. The "Load" command is highlighted by an overlapping rectangle. In the Board's view the overlapping rectangle is not merely a cursor, but is an indication mark in the sense of the claims because it relates to the "load" command in showing that this command has been selected from the menu. It follows that identifying specific selections using on-screen indication marks is known from D3. It would therefore be obvious to a skilled person to employ such conventional indication marks, given the need for on-screen information about print or non-print decisions, and thus to arrive at the subject-matter of claim 1.

5. *Inventive step (auxiliary request)*

The objective technical problem can likewise be seen as improving the efficiency of the inspection process. The

skilled person applying the teaching of D3 to the apparatus of D1, as set out above, would as a usual matter of design seek to make the indication mark as noticeable as possible to avoid it being overlooked. Under these circumstances the positioning of the indication mark at the centre of the specified image is regarded as the obvious choice.

6. *Conclusion on inventive step*

Neither the main nor the auxiliary request is allowable because the subject-matter of claim 1 of both requests lacks inventive step, Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Kiehl S. V. Steinbrener