

Internal distribution code:

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

D E C I S I O N
of 21 July 2004

Case Number: T 0167/03 - 3.2.3

Application Number: 98201826.9

Publication Number: 0945549

IPC: E01F 13/02

Language of the proceedings: EN

Title of invention:

Method for applying guidelines for visually handicapped persons, and a mould adapted for the application of the method

Applicant:

Grahmbeek, Tamar Vanessa, et al

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54(1), 56

Keyword:

Novelty and inventive step - (yes) after amendment"

Decisions cited:

-

Catchword:

-



Case Number: T 0167/03 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 21 July 2004

Appellant:

Grahmbeek, Tamar Vanessa
Surinameplein 55
NL-1058 GN Amsterdam (NL)

Grahmbeek, Marit Astrid
Doelen 17
NL1935 Egmond Binnen (NL)

Representative:

Van Assen, Jan Willem Bernard
Verbeekstraat 8
NL-2332 CA Leiden (NL)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 8 August 2002
refusing European application No. 98201826.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. E. Brösamle
Members: U. Krause
V. Di Cerbo

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division, dated 8 August 2002, to refuse European patent application No. 98 201 826.9 for lack of novelty of the subject-matter claimed in claims 1 and 7.
- II. The Appellant (Applicant) filed the notice of appeal on 8 October 2002, paying the appeal fee on the same day. The statement of the grounds of appeal was submitted on 10 December 2002.
- III. With communication dated 13 October 2003 the Board summoned the Appellant to attend Oral proceedings and advised him of its provisional opinion on the relevant issues which included, besides of novelty and inventive step, clarity and technical character of the invention.

During oral proceedings held on 21 July 2004 the Appellant submitted new claims 1 to 3 and revised pages 2, 3 of the description. Correcting an obvious error in claim 2 (which refers to a method, rather than to a claim, according to claim 1), new claims 1 to 3 are worded as follows:

- "1. Method for providing guidelines as route guiding information for visually handicapped persons by applying ribs on a hard subsoil, the ribs being formed from short strips of synthetic resin lying next to each other with a mutually short spacing in a number of parallel rows so that the ribs (3) form a route for the visually handicapped persons.

2. Method according to claim 1, characterised in that, to the synthetic resin a material is added that can be detected by magnetic activation.
3. Mould adapted to be used in the method according to one or more of the claims 1 through 2, characterised in that, the mould (1) is made of thin flexible sheet material in which one or more groups of parallel recesses (2) with a rectangular cross-section in the shape of narrow channels with rounded off corners made, which mould (1) comprises a group of 10 parallel recesses (2) lying next to each other, in which each recess (2) has a length of 35 centimeter, a width of 1 centimeter with rounded off edges, a height of 0.5 centimeter and a pitch of 5 centimeter, in which the total width of the lane is 55 centimeter."

IV. The following documents were considered as prior art:

D1: US-A-5 385 770

D2: Patent Abstracts of Japan, Vol. 14, No. 049,
29 January 1990 (JP 01278609)

D3: EP-A-0 425 901

D4: WO 94/04757

D5: US-A-4 080 087

V. The Appellant requests that the impugned decision be set aside and a patent be granted on the basis of

claims 1 to 3 and pages 2, 3 of the description as filed at the oral proceedings, together with figures 1 to 4 as published.

VI. The essential arguments of the Appellant can be summarized as follows:

The invention was concerned with providing route guiding information to visually handicapped persons for guidance along a path by means of a rib pattern having a defined directivity on the floor. The directivity was provided by short strips lying next to each other in parallel rows which could either be felt through the soles of shoes or sensed with a cane passed there across. This was different from the disclosure of documents D1 and D3 exhibiting rib patterns having a warning function which meant that the parallel ribs extended transversely to the direction of pedestrian travel to provide a barrier to stop visually handicapped persons from crossing this barrier. The claimed rib pattern was distinguished from that of D3 by the arrangement of the strips parallel and next to each other, rather than in a staggered manner, and from that of D1 by the short spacing between the adjacent parallel strips and the absence of any further intermediate strips between parallel strips. This rib pattern proved to be most beneficial and superior to other guiding systems and has been extensively used in the Netherlands as guidelines for blind or visually handicapped persons in railway stations and airports.

Reasons for the Decision

1. The appeal complies with the provisions of Articles 106 to 108 EPC and of Rules 1(1) and 64 EPC and is, therefore, admissible.

2. *Amendments (Article 123(2) EPC)*

The only substantial amendment of claim 1, compared with its original wording, is the definition of the short strips, rather than of the parallel rows, as lying next to each other with a mutually short spacing. This amendment is based on figure 1 showing a mould having a pattern of aligned parallel perforations lying closely next to each other, which pattern corresponds to the pattern of the strips formed by the perforations in the mould. The description in paragraph 0014 of the published application also discloses the "recesses" in the mould, ie the perforations producing the strips, as being parallel and next to each other.

Claim 2 corresponds to original claim 6 and claim 3 is a combination of original claims 7 and 9.

The description was amended, in paragraphs 0001 and 0004 of the published application, for conformity with the amended claim 1. Further, a short discussion of document D3 was included in paragraph 0002. Original paragraphs 0002, 0003 , 0005 and 0006 were cancelled.

The amendments do not, therefore, give rise to objections under Article 123(2) EPC.

3. *Novelty (Article 54 EPC)*

In the decision under appeal document D1 was considered to anticipate the subject-matter of original claim 1 essentially for the reason that the known rib pattern corresponded to the one of claim 1. Apparently, it was not investigated whether, as argued by the Appellant, a difference was to be seen in that claim 1 is directed to a method for the application of guidelines as route guiding information, as opposed to the use of the rib pattern, in D1, for providing a detectable warning. The Board can accept that, as indicated in D1 by the arrow "A", the parallel ribs of D1 extend transversely to the direction of movement of visually handicapped persons to act as a warning barrier, whereas the ribs of the claimed invention must extend in direction of movement to act as a guideline for guiding visually handicapped persons along a path. This difference alone, however, does not have a technical relevance because it depends on an undefined variable, the direction of movement of the handicapped persons, and relates to a meaning given to the direction of the ribs, rather than to the rib pattern itself and its application. For example, a person may approach a warning rib pattern from the side, as in D1, and thereafter walk along this pattern, thereby changing the meaning of one and the same rib pattern from warning to guiding. It is, therefore, evident that the reference to the meaning or purpose of the rib pattern is a non-technical feature which cannot confer novelty on its own, without any distinguishing feature adapting the rib pattern to this particular purpose or meaning.

As opposed to the original claim, the amended claim 1 defines the ribs as being formed from short strips of synthetic resin lying next to each other with a mutually short spacing in a number of parallel rows. According to this definition the short spacing relates to the lateral distance between aligned neighbouring strips which shall be small in relation to the length of the strip, resulting in a rib pattern comprising, as shown in figure 1 of the application, groups of aligned parallel strips lying closely next to each other. The closely adjacent parallel strips provide a distinct directivity in the longitudinal direction of the strips which clearly distinguishes from the "sinusoidal" pattern shown in figures 1 and 2 of D1 comprising widely spaced rows of parallel strips with obliquely arranged intermediate strips therebetween.

The remaining documents do not disclose ribs formed from short strips of synthetic resin. In D3, the warning pattern of the surface projections comprises parallel rows of staggered strips with a spacing between the rows approaching the length of the strips, rather than aligned parallel strips lying closely next to each other, and D4 discloses a guiding stripe pattern comprising inclined or oblique parallel ribs, rather than short strips in a number of parallel rows.

Amended claim 3 is directed to a mould defined by its suitability for use in the method of claim 1 and by a particular pattern of ten parallel recesses lying next to each other and having defined dimensions.

Considering that the mask used for producing the rib pattern of D1 has apertures which are neither suitable for producing the different rib pattern of claim 1 nor

correspond to the dimensions given in claim 3, the mould of claim 3 is clearly distinguished from the known mask. The remaining documents do not disclose moulds or masks with apertures or recesses for producing ribs on a subsoil.

In summary, the subject-matter of claims 1 and 3, as well as that of claim 2 which relates to a further development of the method of claim 1, meets the requirements of novelty.

4. *Inventive step (Article 56 EPC)*

Starting from document D1 as closest prior art, the subject-matter of claim 1 is distinguished in that, as set out in point 3 above, the aligned parallel strips lying closely next to each other in a number of parallel rows provide a distinct directivity in the longitudinal direction of the strips, thereby adapting the rib pattern to its purpose of serving as a guideline for visually handicapped people along a guide path, instead of providing a warning barrier as in D1.

This modification was not rendered obvious by the remaining available prior art. A pattern of staggered strips arranged in parallel rows is described in D3 as a signalling structure for signalling obstacles and dangerous areas, whereby the skilled person would not readily consider this structure as being suitable for providing guidance along the structure. Moreover, a mere replacement of the "sinusoidal" rib pattern of D1 by the staggered strips of D3 would not lead to the pattern of aligned and closely adjacent parallel strips now claimed in claim 1. Documents D2, D4 and D5 are

concerned with providing route guiding information but the corresponding means are rather particular and so different that they cannot provide a pointer to the claimed solution of providing aligned and closely adjacent strips in parallel rows. In D2 a row of tiles is provided with magnetic material which can be sensed by an induction stick, D4 discloses a guiding track formed by sets of parallel long stripes having a defined oblique orientation with respect to the overall direction of the guiding track, and D5 utilises a number of individual foot plates each having two parallel embossed humps for signalling the guiding direction.

The Board is, therefore, convinced that the subject-matter of claim 1 meets the requirement of inventive step. This also applies to claim 2 concerning a further development of the method defined in claim 1, as well as to claim 3 relating to a mould which is adapted to be used in the method of claim 1 and defined by a further definition of a pattern of recesses corresponding to the inventive rib pattern of claim 1.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent on the basis of claims 1 to 3 and amended description (pages 2 to 3) filed at the oral proceedings, in combination with figures 1 to 4 as published.

The Registrar:

The Chairman:

A. Counillon

F. Brösamle