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**Datasheet for the decision
of 20 April 2010**

Case Number: T 1860/09 - 3.4.02

Application Number: 04820330.1

Publication Number: 1695129

IPC: G02B 6/00

Language of the proceedings: EN

Title of invention:

Clip for fixing a light source around an edge of a panel

Applicant:

Skoff Spolka Z O.O.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 52, 54(3)(4)

Relevant legal provisions (EPC 1973):

EPC Art. 54(1)(2)(4)(5)

Keyword:

"Novelty: no"

Decisions cited:

-

Catchword:

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Case Number: T 1860/09 - 3.4.02

D E C I S I O N
of the Technical Board of Appeal 3.4.02
of 20 April 2010

Appellant: Skoff Spolka Z O.O.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 February 2009
refusing European application No. 04820330.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. G. Klein
Members: M. Stock
D. S. Rogers

Summary of Facts and Submissions

I. The applicant has appealed against the decision of the examining division refusing European patent application number 04820330.1. Reference was made *inter alia* to the following documents:

D1: US-A-5 211 464

D3: WO 97/34281

The examining division reasoned in particular that the subject-matter of the single claim before them lacked novelty because all features of the claim form part of the state of the art as can be seen from document D1. Moreover, the examining division stated under "Additional comments" that the subject-matter of the claim also lacks novelty with regard to document D3.

II. In its statement of grounds of appeal the appellant put forward the following arguments:

In its response of 19 March 2007 to the communication of the European Patent Office, the Applicant had referred to the documents D1 to D10, including the documents D1 and D3, as follows:

In the illumination device described in D1 the source of light was enclosed in a housing that was an integral part of a computer matrix. The housing was mounted along the whole edge of the matrix, which enabled even illumination of a computer matrix surface.

D3 described various shapes of shielding covering specific fluorescent lamp elements that enabled light insertion into a glass plate of predetermined thickness.

Based on the above-presented characteristics of the cited documents, the Applicant had stressed in its reply that unlike the solution known from document D1 with the effect of illumination of the whole surface of a panel (a computer matrix in this case) the solution applied according to the present patent application differed in that:

- it "produces a lighting effect that only the edge of the glass panel opposite the place of clip fixing is lit",
- "the housing in the form of a clip (clip for fixing a light source around an edge of a panel) with the source of light put inside enables its fixing around the edges of glass panels of various thicknesses".

Taking the prior art known from document D3 (referring to the arms of the same length) into consideration, the Applicant had abandoned claim 4, and kept only such claims that referred to the arms of different length, as owing to the different length of the arms (one arm is fixed diagonally to the surface of the panel), the elasticity making it possible to fix the clip around the edges of transparent or semi-transparent panels of various thickness (the essence of the solution).

In the next reply of 21 March 2008 to the communication of the EPO, the Applicant, having analysed its contents,

had referred, among others, to documents D1 and D3, which resulted in even clearer stressing the differences of the lighting clip design according to the present application by narrowing the scope of protection down to one patent claim and clarifying its content by adding the phrase: "adjusted to fixing on edges of glass or plastic panes, in particular glass shelves in a display cabinet or glass desk and table tops". With that reply, the Applicant had sent a corrected description with the prior art according to document D1 and the new claim.

III. The single claim underlying this decision reads as follows:

The lighting clip, adjusted to fixing around an edge of a panel and adapted for supplying by an electric power system, characterised by the fact that it is in the form of a section (1), with at least one side open, adjusted to fixing on edges of glass or plastic panes, in particular, glass shelves in a display cabinet or glass desk and table tops; built of clamping arms (2) and (3) of the same or different length, where one of the arms is diagonal to the external surface of the panel (7) and the arms are joint by a connector (4) which is equipped with at least one source of light (6) placed in the internal space (5).

Reasons for the Decision

1. The Board concurs with the examining division that Document D1 discloses all the features of the present

claim (the references in parentheses apply to this document):

- (a) A lighting clip (illuminating device with clamping part 8 composed of a steel sheet and bent to assume a U-shape),
 - (b) adjusted to fixing around an edge of a panel (light conductor plate 1) and adapted for supplying by an electric power system (implicit), whereby
 - (c) it is in the form of a section (U-shape; see Fig. 1), with at least one side open, adjusted to fixing on edges of glass or plastic panes, in particular, glass shelves in a display cabinet or glass desk and table tops, built of clamping arms (legs 9, 10) of the same or different length, where one of the arms is diagonal to the external surface of the panel (1) and the arms are joint by a connector (see Fig. 1) which is equipped with at least one source of light (light 2) placed in the internal space.
2. The appellant has argued with respect to feature (a) that in D1 "such shaping of the illuminating device makes it permanently fixed to the plate of a stable (even) thickness, i.e., the same device cannot be used interchangeably to glass panes of different thicknesses" whereas according to the present application, the clip can be used interchangeably to the plates of different thickness (the clip is fixed elastically to glass pane surfaces).

3. However, the Board notes that, as far as the present claim contains features ensuring the stated effect, such features are also disclosed in D1. For instance elastic fixing is not indicated in the present claim. If it were, it would be known from D1, see column 1, lines 30 to 39: "The U-legs are fixed elastically on the light conductor plate". It is further mentioned in D1, see column 3, lines 9 to 16, that the clamping is performed in the simplest manner, allowing exchange of the light source and compensation of tolerances.
4. As regards feature (b), no particular comments have been offered by the Appellant.
5. The Appellant has argued in connection with feature (c) that "such shaping of clamping arms 9 and 10, where one is diagonal in that lighting device (document D2) is forced solely by its design, where the fluorescent lamp of that device is the source of light and having fluorescent lamp dimensions in mind in comparison with glass pane 1 thickness, the shape of that device (illuminating device) resulted as shown in Fig. 1. However, as pursuant to Article 69 EPC, interpretation of the scope of protection granted by patent is not only based on patent claims but also on the description and drawings, thus having all this in mind the Applicant is of an opinion that such facts should be taken into account (especially Fig. 2, document D1), which will enable us to refute the arguments that the subject-matter of the application lacks novelty."
6. However, in the Board's view, for the issue of novelty only a comparison between what is claimed in the present application and what is disclosed in a piece of

prior art is made. For this comparison the words defining features in the claim or in the prior art are given the meaning and scope they normally have for a person skilled in the corresponding technical field. In the present case, even if the diagonal arm is adapted in D1 to a fluorescent lamp as a light source, it falls under the definition of present claim, since the light conductor plate in D1 qualifies as a panel, to the external surface of which the arm is "diagonal". Therefore the Board cannot detect any difference between what is defined in present claim 1 and what is shown in Figure 2 of Document D1.

7. Appellant's argument based on Article 69 EPC has been noted by the Board. However, if this Article, which is directed to the legal effect of a patent or patent application in terms of the extent of protection afforded by this patent or patent application, played a role in the examination procedure at all, it would only affect the present application, but not a prior art document, namely Document D1 ("especially Fig. 2, document D1") to which the Appellant makes reference.
8. The Appellant stated that the reason for using the phrase "in particular" in the amended version of the claim was to show the difference versus the known solution and should not cause an objection. The Appellant stated that it was prepared to delete it, should it cause an objection by the EPO.
9. The Board emphasises that its opinion on whether a patent could be granted does not depend on the presence or deletion of this feature. However, the Board concurs with the examining division that this feature has no

limiting effect. Even if this feature were amended by deleting "in particular", it would not establish novelty in view of the fact that the clamping arms of different lengths are known from D1, see Figure 1, and these clamping arms are suitable for being fixed to glass shelves in a display cabinet or glass desk and table tops.

10. In these circumstances it can be left open whether the claimed subject-matter is also not new over what is disclosed in Document D3. However, according to an argument forwarded by the Appellant with the grounds of appeal, see page 4, last 5 lines, that, in contrast to the clamping arms described in D3, the clip according to the present application could be used interchangingly for plates of different thicknesses since the clip was fixed elastically to glass pane surfaces.

11. This argument would not be convincing because the claim of the present application is not limited to elastic fixing. However, if such a limitation were introduced into the claim, it should be noted that it is indicated in D3, see page 4, last paragraph, that the panel 1 can have a thickness from 2 to 4 mm which also requires some elasticity during fitting.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

A. G. Klein