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**Datasheet for the decision  
of 1 March 2013**

**Case Number:** T 1485/10 - 3.2.03

**Application Number:** 07009146.7

**Publication Number:** 1854922

**IPC:** E01F 9/053

**Language of the proceedings:** EN

**Title of invention:**

Block for road kerb equipped with reflector elements and  
process for manufacturing such block

**Applicants:**

Di Maio, Attilio  
Rutigliano, Fabrizio C.E.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 54, 56

**Keyword:**

"Novelty and inventive step (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1485/10 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 1 March 2013

**Appellant I:** Di Maio, Attilio  
(Applicant 1) Via Galileo Ferraris 16  
I-10040 San Gillio TO (IT)

**Appellant II:** Rutigliano, Fabrizio C. E.  
(Applicant 2) Via Vittorio Emanuele III 46  
I-12035 Racconigi CN (IT)

**Representative:** Garavelli, Paolo  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 12 February 2010  
refusing European patent application  
No. 07009146.7 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** E. Frank  
K. Garnett

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division dated 2 February 2010 and posted on 12 February 2010 to refuse European application No. 07 009 146.7 pursuant to Article 97(2) EPC. The examining division held that the subject-matter of claim 1 as filed on 21 December 2009 did not meet the requirements of novelty over US-A-3 253 971 (= D1).
- II. The appellants (applicants) filed a notice of appeal on 20 April 2010, paying the appeal fee on the same day. The statement of grounds of appeal was filed on 17 June 2010.
- III. A communication dated 21 November 2012 pursuant to Article 15(1) RPBA was issued together with a summons to attend oral proceedings. The appellants were *inter alia* notified that, during the oral proceedings, the issue of basis for amendments of claim 1 and, if claim 1 was found to be novel, of inventive step, would also arise. The oral proceedings were duly held on 1 March 2013. As announced by letter dated 28 February 2013, no one was present on behalf of the appellants.
- IV. In their statement of grounds of appeal, the appellants in effect requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims which had been filed on 21 December 2009.
- V. The wording of claim 1 as filed on 21 December 2009 reads as follows:

"1. Block (1) for road kerb characterised in that it comprises a block body (3) and at least one element of reflector material (5), said element of reflector material (5) being directly fixed onto at least a side or upper external surface of said block body (3) by interposing at least one layer of a gluing agent (9) without using any groove housing said element of reflector material (5), said element of reflector material (5) being a ready-to-use band of a flexible film."

VI. The appellants submitted essentially the following arguments:

The reflective element or layer of D1 had to be newly made each time onto the paved surface, whereby a film of plastisol was applied to a release paper or other surface, which was a very time exhausting procedure: cf. D1; column 4, lines 44 to 48 (In the statement of grounds of appeal the words quoted are "applied to realise a paper" but this appears to be a simple transcription error). Moreover, the described plastisol contained plasticizer and a first resin, which were incompatible with an adhesive second resin of the plastisol. Thus, claim 1 differed from D1's disclosure in that the reflective band of the block was an "off-the-shelf" and "ready-to-use" flexible film, which could be easily purchased on the market and directly and quickly be fixed onto the block. Therefore, claim 1 was novel over D1.

## Reasons for the Decision

1. The appeal is admissible.
2. *Novelty and inventive step*  
(Articles 54 and 56 EPC)
  - 2.1 The document D1 relates to a reflective surface, eg of a pavement, which reflects a light beam in the dark, for example to act as a traffic warning: cf. D1; column 1, lines 10 to 13, and lines 35 to 37; and figure 1. Moreover, a band of a flexible film constitutes D1's reflective marker: cf. D1; column 2, lines 65 to 68; column 4, lines 44 to 56; and figure 1.
  - 2.2 Contrary to the appellants' view, the marker described in D1 may be preformed and marketed with an adhesive covering, ie is available "ready-to-use" on the market, and can be later directly attached to a pavement or other surface at any time: see in particular column 1, lines 38 to 44; column 4, lines 55 and 56; and figures 1 and 2 of D1. In addition, no incompatibilities of resins of the plastisol composition are derivable from D1: cf. column 3, lines 55 to 72, and column 4, lines 44 to 54.

Hence, the Board follows the decision of the examining division that the use of a "ready-to-use" band is derivable from document D1.
  - 2.3 Apart from the question of whether the reflective marker of D1 can be understood as being "ready-to-use", the appellants do not dispute that otherwise the subject-matter of claim 1 is disclosed by D1. For the

above reasons, thus D1 deprives claim 1 of novelty: cf. point 2.2 of this decision.

However, the Board notes that in the impugned decision the pavement block body as shown in figure 1 of D1 is implicitly considered to be suitable for a road kerb. In the view of the Board, even if it were to be asserted that a block body of D1's figure 1 could not directly and unambiguously form a block for a road kerb as required by claim 1, ie a pavement edge, nevertheless to fix the reflective band of D1 onto the upper external surface of a pavement edge block for reasons of traffic warning would be a trivial measure only, and thus be obvious for the skilled person. Even in this case, therefore, claim 1 would not involve an inventive step.

2.4 Whether or not claim 1 is actually based on the application as filed thus can be left undecided.

## **Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

C. Spira

U. Krause

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