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Datasheet for the decision of 24 September 2019

Case Number: T 0868/18 - 3.4.02

Application Number: 06847717.3

Publication Number: 2102701

IPC: G02F1/13357, H01J31/12

Language of the proceedings: EN

Title of invention:
DISPLAY DEVICE HAVING FIELD EMISSION UNIT WITH BLACK MATRIX

Applicant:
InterDigital Madison Patent Holdings

Headword:

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1)

Keyword:
Admissibility of appeal - (no) - statement of grounds of appeal does not deal with all reasons for refusing the application

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0868/18 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 24 September 2019

Appellant: (Applicant)	InterDigital Madison Patent Holdings 3 rue du Colonel Moll 75017 Paris (FR)
Representative:	Novagraaf Technologies 12 place des Halles Saint Louis 56100 Lorient (FR)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 13 November 2017 refusing European patent application No. 06847717.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Bekkering
Members:	A. Hornung
	G. Decker

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the examining division which referred to the examining division's communications dated 6 April 2017 (communication C1) and 3 June 2016 (communication C2), refusing European patent application No. 06847717.3 on the basis of Article 97(2) EPC because the set of claims then on file did not fulfil the requirements of Articles 123(2) EPC, Article 56 EPC 1973 and Article 54(3) EPC.

II. With the statement setting out the grounds of appeal, the applicant filed a new set of claims 1 to 9 and requested that the decision of the examining division be set aside and a patent be granted on the basis of this set of claims.

III. In a communication annexed to a summons to oral proceedings, the board informed the applicant about its provisional and non-binding opinion according to which the appeal appeared to be inadmissible.

IV. In response to the summons to oral proceedings, with a letter dated 23 August 2019, the applicant filed comments concerning the board's preliminary opinion of the admissibility of the appeal and an auxiliary request.

V. In a communication dated 6 September 2019, the board provided further explanations why, in its preliminary view, the appeal was inadmissible.

VI. In a letter dated 16 September 2019, the applicant informed the board that it would not attend the oral proceedings.

VII. Following the applicant's letter of 16 September 2019, the oral proceedings scheduled on 26 September 2019 were cancelled.

VIII. Independent claim 1 according to the main request reads as follows:

"A liquid crystal display including a liquid crystal display front end component (60); a field emission device backlighting unit (50) operated in a color sequential mode and joined to the liquid crystal display front end component, the field emission device backlighting unit including a screen structure having a plurality of phosphor elements (33) arranged on the surface of an anode; emitter cells (27) arranged on a cathode and aligned with said phosphor elements and a black matrix (39) separating said plurality of phosphor elements,
characterized in that, in the field emission device backlighting unit, the pitch of said plurality of phosphor elements is about 1-5 mm and is larger than a pixel pitch of the liquid crystal front-end component."

Reasons for the Decision

1. Admissibility of the appeal

1.1 With the statement of grounds of appeal, the applicant filed an amended set of claims as its main and sole request. The only amendment made in this new set of claims consisted in that claim 1 had been amended by moving the feature "a black matrix (39) separating said plurality of phosphor elements" to the preamble of the claim. In addition, the appellant presented arguments in favour of inventive step of the claimed subject-matter over the prior art documents.

No arguments dealing with the examining division's objections under Article 123(2) EPC and Article 54(3) EPC

were submitted with the statement setting out the grounds of appeal.

1.2 Article 108 EPC, in combination with Rule 99(2) EPC, requires that "[I]n the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based". It follows that the statement of grounds of appeal must deal with all the reasons the examination division advanced for refusing the application (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, V.A.2.6.3 c), and further references cited there).

The present statement of grounds of appeal, however, does not contain such reasons for setting aside the decision relating to the objections raised under Articles 123(2) and 54(3) EPC. The amendment of claim 1 according to the main and sole request filed with the statement of grounds of appeal, consisting in moving a feature from the characterising portion of the claim to the preamble of the claim, is also not suitable to overcome these objections.

Therefore, the appeal is inadmissible (Rule 101(1) EPC).

2. The applicant, with its letter dated 23 August 2019, submitted that its statement of grounds of appeal dealt, at least implicitly, with all the reasons the examining division advanced in their refusal of the patent application.

3. The board is not convinced by the arguments presented by the applicant.

3.1 In particular, concerning the applicant's submission that "it was not clear to the Applicant (...) how and to which

extent the statements and objections in the Communication C1 were replacing or were to be combined with the objections in the Communication C2", the board does not see why this alleged unintelligibility would exonerate the applicant from its duty to indicate in the statement setting out the grounds of appeal the reasons for setting aside the decision impugned with respect to the objections raised under Articles 123(2) and 54(3) EPC, be it a reasoning based on the unintelligibility of the refusal with respect to the above objections. The board further notes (i) that objections under Article 123(2) EPC are raised in both communications C1 and C2 against the claims on file at the time of drafting and do not appear to be contradictory and that (ii) objections under Article 54(3) EPC are raised only in communication C1, so that no question arises about how and to what extent the statements in communication C1 were replacing or to be combined with the statements in communication C2.

3.2 Moreover, the board notes with respect to amended claim 1 filed with the statement of grounds of appeal that an amendment of a claim consisting solely in moving a feature from a characterising portion to the preamble of the claim cannot reasonably be considered as a reply to objections raised under Articles 123(2) and 54(3) EPC, *a fortiori* if the amendment is filed without any explanatory comments about the intention that this amendment of the claim is to be construed as an implicit or explicit response to these objections.

3.3 Still further, the submissions made by the applicant in the statement of grounds of appeal with respect to Article 56 EPC 1973 do at least not deal with the objection under Article 123(2) EPC relating to dependent claim 9 (cf. communication C1, point 3).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

M. Kiehl R. Bekkering

Decision electronically authenticated