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**Datasheet for the decision
of 15 March 2022**

Case Number: T 2130/18 - 3.4.03

Application Number: 12721336.1

Publication Number: 2707228

IPC: B42D15/00, G02B3/06, G02B27/22,
B42D25/29, B42D25/00

Language of the proceedings: EN

Title of invention:
SECURITY DEVICE

Patent Proprietor:
De La Rue International Limited

Opponents:
CCL Secure Pty Ltd
Giesecke+Devrient Currency Technology GmbH

Headword:

Relevant legal provisions:
EPC Art. 52(1), 54, 56, 100(a)
RPBA 2020 Art. 13(2)

Keyword:

Novelty - (yes)

Inventive step - (yes) - non-obvious combination of known features

Amendment after summons - exceptional circumstances (no)

Decisions cited:

Catchword:



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Case Number: T 2130/18 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 15 March 2022

Appellant: CCL Secure Pty Ltd
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 26 June 2018
rejecting the opposition filed against European
patent No. 2707228 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Papastefanou
Members: J. Thomas
 D. Prietzel-Funk

Summary of Facts and Submissions

I. This is an appeal by opponent I against the decision of the opposition division rejecting its opposition and maintaining the European patent EP 2 707 228 B1 as granted.

II. The opposition had been filed against the patent in its entirety based on Article 100(a) EPC, on the grounds of lack of novelty (Articles 52(1) and 54 EPC) and lack of inventive step (Articles 52(1) and 56 EPC).

III. At the end of the oral proceedings before the board of appeal the requests of the parties were as follows.

The appellant requested that the decision under appeal be set aside and the patent be revoked. An initial request for reimbursement of the appeal fee was withdrawn.

The respondent (patent proprietor) requested that the appeal be dismissed (main request), or, if the appeal was held allowable regarding the patent as granted, that the case be remitted to the opposition division for further prosecution on the basis of auxiliary requests 1 to 11 filed during the opposition procedure and filed again with the reply to the statement setting out the grounds of appeal.

It also requested not to admit documents D8, D12 and D13, as well as videos V1, V2 and V3, into the proceedings.

IV. The following documents are referred to in this decision:

D1: US 5 724 758 A;
D2: EP 0 887 699 A1;
D4: WO 2011/051668 A1;
D8: WO 2012/024718 A1;
D12: "History of Lenticular and Related Autostereoscopic Methods", David E. Roberts, 2003;
D13: Screen dump of V3 (see below) on 5 November 2018;
V1: <https://youtu.be/Eep5FWqAX5Y> - "Lenticular butterfly animated display using LenBB tiles" published on 27 December 2007 by user lenticular;
V2: <https://youtu.be/ekelzC71P70> "Lenticular butterfly animated display using LenBB tiles" published on 27 December 2007 by user lenticular;
V3: https://youtu.be/W4-2_E3y2H8 "Amazing animated horse running using LenBB tiles" published on 16 February 2008 by user lenticular.

V. Independent claim 1 of the patent as granted reads as follows:

*A security device having a lenticular device comprising an array of lenticular focusing elements; a corresponding array of sets of image strips, the sets of image strips having substantially the same periodicity as, or an integral multiple of the periodicity of, the array of lenticular focusing elements, wherein the image strips are formed and the focusing elements located relative to the image strips such that at each of a plurality of viewing angles, a respective one image strip from each set is viewed in response to incident light falling on a respective lenticular focusing element, and **characterised by** the image strips being constructed such that the device presents a cyclically repeating sequence of images as the device is viewed at successive viewing angles, the image sequence comprising a change in form of an image*

between a first form and a second form and then a reversal of the sequence back to the first form, the combined image sequences presenting a contiguous variation in the image form.

VI. Independent claim 18 of the patent as granted reads as follows:

*A method of manufacturing a security device, the method comprising providing a lenticular device comprising an array of lenticular focusing elements and a corresponding array of sets of image strips, the sets of image strips having substantially the same periodicity as, or an integral multiple of the periodicity of, the array of lenticular focusing elements, wherein the image strips are formed and the focusing elements located relative to the image strips such that at each of a plurality of viewing angles, a respective one image strip from each set is viewed in response to incident light falling on a respective lenticular focusing element, and **characterised by** the image strips being constructed such that the device presents a cyclically repeating sequence of images as the device is viewed at successive viewing angles, the image sequence comprising a change in form of an image between a first form and a second form and then a reversal of the sequence back to the first form, the combined image sequences presenting a contiguous variation in the image form.*

VII. The arguments of the appellant, as far as they are relevant for the present decision, are summarised as follows:

The appellant interpreted the following three disputed features defined in the wording of claim 1 in the following sense:

- A "reversal of the sequence" was not an exact mirroring since the mirroring was presented in the patent in paragraphs [0009] and [0010] as a preferred embodiment. The reversal of the sequence from the first to the second image back to the first image included a reversal that did not exactly match the forward sequence of the images in exactly the same but reversed form, hence an asymmetric reversal.

- A "change in form of an image" was not limited to a change in size and / or shape. A change in position and colour was also covered when interpreting "change in form of an image" in its broadest sense. This was even more true since the description presented the change in form by a change in size and / or shape only as preferred embodiments (see paragraphs [0009] and [0010] of the impugned patent).

- A "security device" had no limiting effect on the subject-matter defined in claim 1, since none of the defined features of the claim differentiated any lenticular device from the claimed security device. Lenticular devices were well known to be used in security devices as indicated in the impugned patent in paragraphs [0002] to [0004]. The features defined in claim 1 did not relate to a difficulty of counterfeiting or manufacturing in order to increase the security of the claimed lenticular device. Therefore, every lenticular device presenting the features defined in present

claim 1, even without being explicitly mentioned as presenting a security device, should be considered anticipating the novelty of the security device defined in claim 1.

As a result of the aforementioned interpretation of features, document D1 anticipated the novelty of the subject-matter defined in present claim 1. In particular, Figure 8 of document D1 showed a reversal of the sequence back to the first image. Even if this embodiment referring to Figure 8 only applied to motion, it disclosed a change in form of an image, since the motion of an object also implied a change in the form of the image. Finally, document D1 disclosed all technical features defined in claim 1 even by referring only to an entertainment device due to its interpretation of a security device.

Document D2 anticipated the novelty of the subject-matter defined in claim 1, because it disclosed a cyclic repetition of an image (see Figure 5) with a contiguous variation and a change of form from a first image (31) to a second image (33) and back to the first image (31). Figure 5 also indicated the use of the same number of steps from the first image to the second image and back to the first image (three steps by images 32 and 34 in Figure 5). Hence, a change in form with a smooth transition was present in Figure 5, since images 31 and 33 in Figure 5 were different. Therefore, the lenticular device disclosed by document D2 showed all features defined in claim 1 in combination, since the use of the wording "security device" had no limiting effect on the subject-matter of claim 1.

Document D4 anticipated the novelty of the subject-matter defined in claim 1, because the features defined

in the characterising portion were disclosed in document D4. In particular, Figures 3 and 6b disclosed a "transient image" for an image cycle from a first image to a second image. Therefore, the feature of a contiguous variation was disclosed. Figure 6 showed the repetition of the cycle when the device was "top-tilted-*further-forward*". The extrapolation of Figure 6b of document D4 showed a reversal of the sequence and the cyclic repetition of the whole cycle. Finally, the change in form of the image was disclosed by the change of colour (e.g., Figures 6b, 7a and 7b) and / or the change of position of the chevron shown in Figure 8 of document D4. Finally, document D4 also referred to a "security device" (title).

Concerning inventive step, the appellant argued that document D4 was not the most suitable starting point for inventive step because the device shown in D4 had fewer features in common with the claimed device than the device disclosed by document D1. Moreover, document D1 was more suitable as closest prior art, since the wording "security device" had no limiting effect on the subject-matter defined in granted claim 1, as the technical features associated with it were absent from the claim.

Starting with document D1, the use of the lenticular device shown in document D1 as a security device was a known alternative application of the device of document D1 since any differentiating feature in relation to a security device was absent in the wording of claim 1. Hence, the only distinguishing feature between the device defined in claim 1 and the teaching of document D1 at best was the reversal of the sequence. This however did not solve any technical problem. The reversal would merely concern an aesthetic decision to

avoid the image snapping back. An improvement of authentication due to the avoidance of an abrupt change in the image sequence was not proven. An improved or simplified authentication did not depend on the reversal of the sequence. Hence, the reversal of the sequence was an aesthetic choice and should be considered being part of the common general knowledge of the skilled person. Therefore, starting from the device known from document D1, the skilled person would arrive at the device defined in claim 1 using its common general knowledge without involving an inventive step.

A new line of argument in view of inventive step with document D2 as closest prior art should be possible, since the final decision on novelty over D2 was not known before and the content of document D2 was well known to all participants so that no extra work would be required.

VIII. The arguments of the respondent, as far as they are relevant for the present decision, are summarised as follows:

The respondent interpreted the following three disputed features defined in the wording of claim 1 in the following sense:

- A "reversal of the sequence" was only to be understood in the sense that "the" sequence was meant. Hence, the only possible interpretation was an exact mirroring of the sequence to provide the contiguous change from a first image to a second image in the inverted / reversed way in order to come back to the first image. This was also not in contradiction to paragraphs [0009] and [0010] of

the impugned patent. In paragraph [0009], the word "preferred" referred to the snapshots and was therefore not in contradiction to an exact mirroring. In paragraph [0010], the word "preferred" referred to the expansion / contraction and not to the mirroring of the sequence. Hence, the wording in claim 1 was clear and should only be understood in the meaning of an exact mirroring of "the" sequence.

- A "change in form of an image" was throughout the whole impugned patent presented as a change in shape and / or size. This was in accordance with the meaning of "form" as given in the dictionary, where "form" referred to the visible shape; the colour was mentioned as not belonging to the form. A change in colour was mentioned as complementary and should therefore not be mixed up with a change in form. Moreover an object moving within the image without changing its form but just changing its position was not covered by the wording of claim 1, which should be understood in its technical meaning and not by applying an academic approach. This understanding was in full conformity with all embodiments of the impugned patent in which a change in form was always shown as a change in size and / or shape. A change of position and / or a change of colour were at the best additional features.

- A "security device" had a limiting effect on the subject-matter defined in claim 1, since it had features allowing to secure an item against counterfeiting. A "security device" needed to be relatively difficult to be manufactured but easy to be authenticated. It thus contained intrinsically

linked features which allowed the skilled person to distinguish a lenticular device being a security device from a lenticular device being used only for entertainment.

Having these interpretations in mind, document D1 did not anticipate the novelty of the subject-matter defined in present claim 1. In particular, the embodiment presented in Figure 8 of D1 did not disclose a mirrored reversal of the sequence but an asymmetric one, and referred to the motion of an object and not to a change in its form. Furthermore, the embodiment shown in Figure 2 of document D1 relating to an image series included a change in form but concerned only a non-cyclically repeated sequence. This image series / sequence ended after a single cycle (e.g., D1, Figure 2). The change in form did not present a contiguous variation in the image form, either. Finally, the device disclosed in document D1 did not relate to a security device because it concerned entertainment.

Document D2 did not anticipate novelty for similar reasons as document D1. It did not disclose a security device. In particular, the reference to the size of the lenticules in document D2, column 7, lines 18 to 20, showed that the device was not adapted for a use as a security device. Document D2 did not show the reversal of the sequence, either, as the image change from the second image back to the first was not a reversal of the forward cycle using the sequence in inverse order, but a fading of the images where the first and second images were slowly mixed in order to change back from the second to the first image (see document D2, Figures 10 to 12). This fading from the second image

back to the first image did not show a contiguous variation of the image.

Document D4 did not anticipate novelty because it disclosed neither a change in form of an image (only a colour switch of the same images; the movement of the chevron shown in Figure 8 was not a change in form, because the unchanged object changed only place), nor a contiguous variation in the image form nor a cyclic repetition. Since no change in form of an image was shown, it could also not disclose a reversal of the sequence back to the first form. Therefore, none of the features defined in the characterising portion were disclosed by document D4.

Document D4 represented the only valid closest prior art because it was the only document of the three documents D1, D2 and D4 that referred to a security device. In the introductory paragraphs [0001] to [0006] of the impugned patent it was stated that the problem which the impugned patent was intended to solve was a more reliable authentication, whereas documents D1 and D2 did not state anything in this respect. Similarities with regard to the number of common features were not the decisive point for selecting the closest prior art. The actual conditions and problems dealt with in the impugned patent had to be taken into account. Therefore, only document D4 was suitable as closest state of the art.

Starting from document D4, the skilled person would recognise that document D4 only showed a colour change of the object shown in the viewed image. There was no conclusive indication as to why the subject-matter known from document D4 should be modified in order to arrive at the subject-matter defined in claim 1 of the

patent. Consequently, the subject-matter defined in claim 1 was based on an inventive step.

An inventive step attack starting from document D1 should not be argued because as outlined two paragraphs earlier, the selection of document D1 as closest prior art, which dealt with a lenticular device for entertainment, was already flawed. Therefore, further lines of argument with document D1 as closest prior art were not convincing.

The new inventive step argument with document D2 as closest prior art, presented for the first time during the oral proceedings before the board of appeal, should not be admitted into the proceedings, as it could only be admitted under exceptional circumstances justified by cogent reasons, according to Article 13(2) RPBA 2020. Neither exceptional circumstances justified by cogent reasons were put forward by the appellant, nor was the respondent able to identify any.

Documents D8, D12 and D13 and videos V1 to V3 were not to be admitted into the proceedings since they were late filed and less relevant than other documents already in the proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. Main request
 - 2.1 Interpretation of the disputed features

Taking into account the parties' arguments, the board understands the three disputed features defined in the wording of claim 1 as follows.

- Concerning the "reversal of the sequence", the wording in claim 1 is clear in such that it does not define an arbitrary reversal from the second image back to the first image but it defines a "*reversal of the sequence back to the first image*" (emphasis by the board). Therefore, it can only be understood as a mirroring of the sequence from the first image to the second image. The board also does not see any contradiction with the description in line with the respondent's explanations. In each of the allegedly contradictory paragraphs referred to by the appellant (paragraphs [0009] and [0010]), the word "preferred" does not refer to the mirrored reversal but to a different issue in the corresponding sentences.

- A "change in form of an image" does not encompass a change in colour, as also explained by the respondent. This is also supported by the dictionary interpretation.

- The board agrees also with the respondent that a lenticular device used for entertainment is not necessarily suitable for use as a security device. A security device has specific requirements for its structural design, which are stricter and different from those for a lenticular device used for entertainment. Therefore, the wording "security device" limits the possible types of lenticular devices that can be used in the claimed security device, even though no specific feature is

expressly defined for this in the wording of claim 1. The skilled reader will be able to distinguish the specific types adapted for use in the claimed security device from those which are not suitable.

2.2 Novelty in view of D1

Document D1 shows (the references in parentheses in this paragraph refer to document D1) a ~~security device having~~ lenticular device (title) comprising an array of lenticular focusing elements (102); a corresponding array of sets of image strips (106, 107, 108, 109), the sets of image strips having substantially the same periodicity as, or an integral multiple of the periodicity of, the array of lenticular focusing elements (Figure 1), wherein the image strips are formed and the focusing elements located relative to the image strips such that at each of a plurality of viewing angles (column 3, lines 12 to 29), a respective one image strip from each set is viewed in response to incident light falling on a respective lenticular focusing element (Figure 1 and 3), whereby the image strips being constructed such that the device presents a cyclically repeating sequence of images as the device is viewed at successive viewing angles (column 4, lines 29 to 32; Figure 8), the image sequence comprising a change in form of an image (column 2, lines 9 to 13) between a first form (Figure 2) and a second form (Figure 2) ~~and then a reversal of the sequence back to the first form,~~ the combined image sequences presenting a contiguous variation in the image form (column 3, lines 22 to 34; Figure 2).

Taking into account the interpretation of the features presented above, the board concludes that document D1

does not disclose a lenticular device that can be used as a "security device", as this requires some technical specifications not disclosed in document D1 such as particularly small lenticular focusing elements with periodicity or pitch adapted thereto as well as specifically adapted image strips (see point 2.1 above). The reversal shown in Figure 8 is doubtless asymmetric, and does therefore not show a reversal of the sequence as understood by the board (see point 2.1 above).

The arguments of the appellant could not convince the board due to the different interpretation of the disputed terms.

The subject-matter defined in claim 1 is consequently new over the teaching of document D1.

2.3 Novelty in view of D2

Document D2 shows a lenticular device which is obviously intended to be used to entertain the observer (column 2, lines 27 to 35, column 7, lines 37 to 39). A use as a security device is not mentioned anywhere in document D2. Hence, it does not disclose the implicit features related to the lenticular device being defined as a "security device" in granted claim 1. Moreover, document D2 does not disclose "a reversal of the sequence back to the first form". The cyclic presentation of an image sequence as shown in Figure 5 does not disclose a mirrored reversal of the sequence from the first image to the second image back again to the first image. Figure 5 presents the change from a first image at reference number 31 to a second form at reference number 33 using the sequences as indicated by the reference number 32. The way back from the second

image to the first image occurs by fading of the second image back to the first image as shown in Figures 10 to 12. This is not a reversal of the sequence.

Therefore, the subject-matter of granted claim 1 is new over the teaching of document D2.

2.4 Novelty in view of D4

Document D4 does not disclose a "cyclically repeating sequence of images" as alleged by the appellant when the device was top-tilted-*further-forward*. According to the Board's understanding, this further forward extrapolation has no basis in document D4. It presents an unfounded extrapolation of facts which are not disclosed in this way by document D4. Therefore, a cyclic repetition of the cycle is not directly and unambiguously disclosed in document D4. The "reversal of the sequence" is also not directly and unambiguously disclosed since the sequence shown in document D4 discloses a single change from one coloured image to another one, or a single movement of the chevron in one direction, but not the change in the reversed order back to the first starting image. Therefore, the features of "*a cyclically repeating sequence of images*" and "*a reversal of the sequence back to the first form*" are not disclosed by document D4. This is even independent from the question if a change of position of an object within an image as shown by the movement of the chevron in Figure 22 is considered as a change in form of an image.

Therefore, the subject-matter defined in granted claim 1 is new over the teaching of document D4.

2.5 Inventive step starting from D4

2.5.1 Closest prior art

Document D4 is the most appropriate starting point for arguing an inventive step as it relates to a security device comprising a lenticular device with moving images.

2.5.2 Differentiating features

As indicated under point 2.4 above at least the features "*reversal of the sequence back to the first form*" and "*cyclically repeating sequence of images*" are missing in document D4.

2.5.3 Technical effect - technical problem solved

These differentiating features solve the problem of an enhanced security and an easier authentication of the security device. They avoid any sudden jump in the complete image sequence and the exact reversal provides a smooth image change from the first image to the second image and back to the first image. The resulting suppressed jumps make it more difficult to counterfeit the device. On the other hand, the authentication of the device is facilitated, as jumps in the image sequence can be easily detected, which then would only occur with counterfeit devices.

2.5.4 Obviousness

The authentication of the security device is discussed in document D4, but not in documents D1 and D2, which relate to lenticular devices for entertainment and not for security devices. Therefore, the board cannot see any reason why the skilled person would consult the

teachings of documents D1 or D2. No hint can be seen why the skilled person would consider a lenticular device not used as a security device in order to combine it with the security device known from document D4. Lenticular devices used for entertainment have clearly different technical requirements as e.g., the size of lenticles and / or size and arrangement of image stripes. Consequently, there is no indication of why the skilled person would consult the teachings of documents D1 or D2 even if it could do so. Therefore, the combination of the teaching of document D4 with one of the documents D1 or D2 is not obvious and any combination of these documents must be considered hindsight.

In addition, it is noted, that even if the skilled person would consult the teaching of one of D1 or D2, and combine it with the teaching of document D4 in order to overcome the posed technical problem, the feature "*reversal of the sequence back to the first form*" would still be missing.

Consequently, the board is of the opinion that the arguments put forward by the appellant in this respect are based on hindsight, as clear indications of the combination of the teaching of document D4 with that of one of the documents D1 or D2 are missing, as are the required indications of any necessary amendments.

2.5.5 Therefore, the subject-matter defined in claim 1 is inventive when considering document D4 as closest prior art.

2.6 Inventive step starting from D1

2.6.1 Closest prior art

Document D1 is not suitable as closest prior art since it relates to a lenticular device for an entertainment device and not for a security device. These two types of devices have clearly different technical requirements (see point 2.1 above). Starting from document D1 as closest prior art is therefore already based on hindsight.

Further, the board notes, that even if the skilled person would have considered document D1 as starting point, the subject-matter defined in claim 1 of the patent would not be obtained by combining the teachings of document D1 with those of document D4 (or any other document), since none of the cited documents shows the feature of a "*reversal of the sequence*". This feature is also not a straightforward solution on the basis of the common general knowledge of the skilled person. Therefore, even if document D1 were taken as the closest prior art, the skilled person would not obviously arrive at the subject-matter defined in claim 1.

2.6.2 Consequently, the subject-matter defined in claim 1 involves an inventive step in the sense of Article 56 EPC.

2.7 Admittance of a new line of argument: inventive step starting from D2

2.7.1 During the oral proceedings before the board the appellant presented a new line of argument of lack of inventive step considering document D2 as closest prior art. In the appellant's view this should be admitted into the proceedings, since the content of document D2 was known, so that this new line of argument would not

require any extra work for the parties or the board. Furthermore, the new rules of procedure of the Boards of Appeal did not apply to the present case, since the case was filed in 2019, hence before their entry into force (1 January 2020). Finally, the board's final conclusion on novelty of the subject-matter of claim 1 over document D2 became only known during the oral proceedings and the appellant should be allowed to react.

2.7.2 The respondent requested that a discussion of inventive step with document D2 as closest prior art should not be admitted into the proceedings according to Article 13(2) RPBA 2020, as no exceptional circumstances justified by cogent reasons were presented by the appellant nor were apparent.

2.7.3 The board notes that document D2 was never considered during the opposition proceedings or the appeal proceedings as closest prior art in an argument relating to inventive step. The appellant never considered document D2 as a starting point for an inventive step argumentation, even though novelty of the subject-matter defined in claim 1 over D2 was already concluded by the opposition division in its decision and by the board in its preliminary opinion.

The discussion of lack of inventive step with document D2 as closest prior art constitutes therefore a new line of argument, and therefore an amendment to the appellant's appeal case.

The board's conclusion on novelty over document D2 cannot be considered surprising, since it was in line with the opposition division's conclusion and was also indicated as a possible outcome in the board's

preliminary opinion.

Further, according to Article 25(2) RPBA 2020, Article 13(2) RPBA 2020 applies in the present case. Moreover, at this late stage of the proceedings the question is not whether or not an admittance of this amendment of the appellant's case into the proceedings would cause extra work to the participants, but whether exceptional circumstances justified with cogent reasons allow the admittance of this new line of argument into the proceedings.

Therefore, since no such exceptional circumstances justified by cogent reasons are observable, this amendment to the appeal case cannot be admitted into the proceedings.

3. Request of admittance of documents D8, D12, D13 and videos V1 to V3
- 3.1 The respondent requested not to admit documents D8, D12 and D13, as well as the videos V1 to V3, into the proceedings.
- 3.2 Since none of the appellant's lines of argument on novelty and / or inventive step referred to one these documents or videos, there was no need to decide on the request of their admittance into the proceedings.
4. Claims 2 to 19

Independent claim 18 uses the same wording with respect to the respective features compared to claim 1, but defining "[a] method of manufacturing a security device". Therefore, all arguments presented for claim 1 also apply *mutatis mutandis* to claim 18 which is

considered new and inventive over the available prior art.

The same conclusion applies to claims 2 to 17 and 19 as they depend directly or indirectly on the independent claims 1 or 18 which are also considered new and inventive over the available prior art.

5. Conclusion

It follows from the above that the subject-matter defined in all claims of the patent as granted fulfils the requirements of the EPC and in particular of Articles 52(1), 54(1) and (2) and 56 EPC. Therefore, the impugned decision was correct and the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

M. Papastefanou

Decision electronically authenticated