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**Datasheet for the decision
of 20 December 2023**

Case Number: T 0666/22 - 3.3.06

Application Number: 06765041.6

Publication Number: 1915482

IPC: D21H21/44, B42D15/00

Language of the proceedings: EN

Title of invention:

SECURITY DEVICES FOR SECURITY SUBSTRATES

Patent Proprietor:

De La Rue International Limited

Opponents:

Hueck Folien Gesellschaft m.b.H.
Leonhard Kurz Stiftung & Co. KG

Headword:

Security device/De La Rue

Relevant legal provisions:

EPC Art. 84, 123(2)

Keyword:

Claims - clarity (no)
Amendments - added subject-matter (yes)

Decisions cited:

G 0003/14

Catchword:



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Case Number: T 0666/22 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 20 December 2023

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 January 2022 concerning maintenance of the
European Patent No. 1915482 in amended form.**

Composition of the Board:

Chairman J.-M. Schwaller
Members: R. Elsässer
 J. Hoppe

Summary of Facts and Submissions

I. The appeals of opponents 1 and 2 lie against the decision of the opposition division to maintain the European Patent EP 1 915 482 in amended form, based on the first auxiliary request, claim 1 of which reads:

"1. A security device (10) for a security substrate comprising a carrier (11) of an at least partially light transmitting polymeric material, said carrier (11) bearing a plurality of first indicia (12) which are easily visible to the human eye, said first indicia (12) being defined by a plurality of smaller second indicia (13) which are less visible to the human eye positioned relative to each other so as to enable the first indicia (12) to be visualised, the first indicia (12) having a height in the range of 0.8 mm to 28.0 mm and the second indicia (13) have a height in the range of 0.2 mm to 2.0 mm and in that the first and second indicia (12,13) comprise alphabetic or numeric characters, symbols or pictorial elements, and in that the first and second indicia (12,13) are both negative indicia, and in that each of the first indicia (12) comprises a plurality of individual elements, characterised in that each element of each first indicia (12) is formed from a plurality of second indicia (13)."

II. With their respective grounds of appeal, the appellants brought forward *inter alia* that the patent in the form held allowable by the opposition division contained added subject-matter and was unclear (Articles 123(2) and 84 EPC).

III. With its reply, the proprietor and respondent filed **D17** ("Rudiments of Biology") and **D18** (Review of Radiologic Physics) and argued that claim 1 was clear in view of the information provided by these documents and by **D16** ("Structure of Materials"). The requirements of Article 123(2) EPC were also met; although there was no literal support for the feature "*each of the first indicia (12) comprises a plurality of individual elements*", it was nevertheless directly and unambiguously derivable from the content of the application as filed.

IV. In response to the board's preliminary opinion, the respondent announced not to be represented at the oral proceedings, and with submission of 30 November 2023 it withdrew its request for oral proceedings, which were subsequently cancelled.

V. The final requests of the parties as presented in their written submissions were as follows:

The appellants request to set aside the contested decision and to revoke the patent.

The respondent requests to reject the appeals.

Reasons for the Decision

1. Preliminary remark

Since the respondent has withdrawn its request for oral proceedings and the main request of the appellants can be granted (see hereinafter), a final decision based on the written submissions of the parties can be taken without holding oral proceedings.

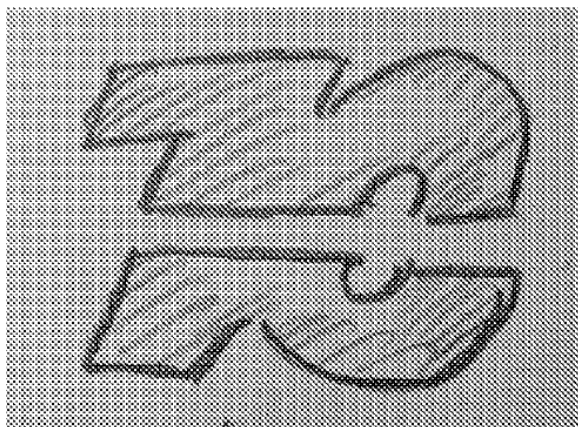
2. Article 123(2) EPC

As the board announced its preliminary opinion that these requirements were not met and since no counter arguments have been presented by the respondent, the board sees no reason to deviate from its preliminary view, that there is no basis in the application as filed for the feature *"and in that each of the first indicia (12) comprises a plurality of individual elements, characterised in that each element of each first indicia (12) is formed from a plurality of second indicia (13)."*

2.1 The respondent recognised that there was no literal basis for this feature in the application as filed, but argued that a support was found at page 5, lines 24-24; page 8, line 10-14 and in figures 1, 2, 3, 10, 11, more particularly in figures 5 and 6 thereof. The respondent argued that the first indicia shown in figure 5 comprised three elements, namely letters D, L and R, whereby each of these elements was formed by a plurality of round symbols which were the second indicia. Likewise, the first indicia shown in figure 6 comprised two elements, namely the numbers 7 and 0, whereby each of these elements was formed by a plurality of star shaped symbols which were the second indicia.

2.2 The board cannot accept these arguments, because although it can be acknowledged that specific embodiments of first indicia comprising a plurality of "individual elements" are disclosed in the application as filed, these elements are in each case entire numeric or alphabetic characters, but claim 1 is in no way restricted to such characters. Further, as the following illustration shows, it is possible for the

indicia "70" to comprise "individual elements" that are neither numeric nor alphabetic characters:



And alternatively, a single number or letter could be subdivided into several segments or "elements" with each segment being formed of second indicia.

Thus, the feature "first indicia comprising a plurality of individual elements" is broader, more abstract and more general than what is actually derivable from the application as filed.

- 2.3 The application as filed furthermore does not disclose an embodiment of a first indicia comprising symbols or pictorial elements which comprises a plurality of individual elements. In this context it can be noted that the claim clearly distinguishes between alphanumeric characters and symbols, so that the embodiments of fig. 5 and 6 cannot support this aspect of the claim. The same applies to the other figures. The only figure that could potentially support an embodiment of a symbol comprising a plurality of elements is figure 3, which is a security element having first indicia in the form of a symbol, namely a French flag (page 7, line 28). However, while this symbol comprises three elements, namely the stripes, not all of them are formed from a plurality of second

indicia, as presently claimed, because the white middle stripe is left clear. Moreover, neither the first nor the second indicia are negative, as presently defined in claim 1 at issue.

2.4 For all these reasons, it is concluded that the subject-matter of claim 1 at issue extends beyond the content of the application as filed, with the consequence that the requirements of Article 123(2) EPC are not met.

3. Article 84 EPC

The board announced in its preliminary opinion that the requirements of Article 84 EPC were not met either. As no counter arguments have been presented by the respondent, the board again sees no reason to deviate from its preliminary view, namely that at least the feature "which are easily visible to the human eye" is not clear.

3.1 This feature was added to claim 1 during the opposition proceedings and so, according to the Enlarged Board of Appeal decision G 3/14, its clarity **can** be examined. In the board's view, the feature lacks clarity because the term "easily" is subjective in the sense that persons with a comparable eyesight and using standardised viewing conditions might come to different conclusions as to whether given indicia are easily visible, visible or only visible with some difficulties.

3.2 This objection cannot be overcome by the content of either **D16**, **D17** or **D18**, because while these documents might provide guidance as to the resolution of the eye at various viewing distances (**D16**: 30 cm; **D17**: 25cm) , they do not clarify what can be "easily" seen because,

as mentioned above, this assessment is entirely subjective.

4. As the respondent's sole request on file, namely the main request, does not meet the requirements of Article 123(2) and 84 EPC, the patent has to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Pinna

J.-M. Schwaller

Decision electronically authenticated