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Datasheet for the decision of 29 November 2024

Case Number: T 0523/23 - 3.2.05

Application Number: 16710302.7

Publication Number: 3274186

IPC: B42D25/30, B41M3/14, G02B3/00, G02B27/22, B42D25/29

Language of the proceedings: EN

Title of invention:
Security device and method of manufacture

Patent Proprietor:
De La Rue International Limited

Opponents:
Giesecke+Devrient Currency Technology GmbH
Giesecke+Devrient Mobile Security GmbH

Relevant legal provisions:
EPC Art. 54, 100(a), 111(1)
RPBA 2020 Art. 11

Keyword:
Grounds for opposition - lack of novelty (yes)
Remittal (yes)

Decisions cited:
T 2130/18, T 0573/20

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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0523/23 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 29 November 2024

Appellant: (Opponent 1)	Giesecke+Devrient Currency Technology GmbH Prinzregentenstrasse 161 81677 München (DE)
Representative:	Zeuner Summerer Stütz Patent- und Rechtsanwälte Partnerschaft Nußbaumstraße 8 80336 München (DE)
Respondent: (Patent Proprietor)	De La Rue International Limited De La Rue House Jays Close Viables Basingstoke, Hampshire RG22 4BS (GB)
Representative:	Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Party as of right: (Opponent 2)	Giesecke+Devrient Mobile Security GmbH Prinzregentenstraße 161 81677 München (DE)
Representative:	Zeuner Summerer Stütz Patent- und Rechtsanwälte Partnerschaft Nußbaumstraße 8 80336 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 13 January 2023 rejecting the oppositions filed against European**

patent No. 3 274 186 pursuant to Article 101(2) EPC.

Composition of the Board:

Chairman	P. Lanz
Members:	M. Holz
	F. Blumer

Summary of Facts and Submissions

I. Opponent 1 (appellant) filed an appeal against the opposition division's decision to refuse the oppositions against European patent No. 3 274 186 (the patent). In the decision under appeal, the opposition division concluded, *inter alia*, that the subject-matter of claims 1 and 15 as granted was new in view of document D2 and that none of the grounds for opposition that had been raised prejudiced the maintenance of the patent.

With its statement of grounds of appeal, the appellant filed documents D13, D14 and D15 relating to results of a physical analysis of HP label "B9IA3441683" (HP label).

II. By letter dated 14 July 2023, the patent proprietor (respondent) informed the board that it had requested the appellant to send a part of the HP label to the respondent. By letter dated 31 July 2023, the appellant informed the board that it had sent the right part of the HP label to the respondent on 17 July 2023 and that the respondent had confirmed receipt of the label.

The respondent filed a reply to the appellant's statement of grounds of appeal including sets of claims and descriptions according to auxiliary requests 1 to 6.

By letter dated 31 January 2024, the appellant filed further submissions.

The parties were summoned to oral proceedings before the board scheduled for 29 November 2024.

By letter dated 29 July 2024, the respondent filed further submissions.

On 7 August 2024, the board issued a communication under Article 15(1) RPBA providing the board's preliminary opinion on the case.

By letter dated 7 October 2024, the respondent filed submissions including a set of claims and a description according to auxiliary request 0.

By letter dated 15 November 2024, the appellant filed further submissions.

Oral proceedings before the board were held on 29 November 2024.

III. Final requests

The appellant requested

- that the decision under appeal be set aside and the patent be revoked;
- that Figure 1 included on page 11 of the respondent's reply to the grounds of appeal and the respondent's explanations of that figure not be admitted into the appeal proceedings;
- that the case not be remitted to the opposition division for further prosecution; and
- that the respondent's auxiliary request 0 not be admitted into the appeal proceedings.

The respondent requested

- that the appeal be dismissed, i.e. that the patent be maintained as granted (main request) or, in the alternative,
- that the decision under appeal be set aside and the case be remitted to the opposition division for further prosecution or
- that the decision under appeal be set aside and the patent be maintained as amended based on the claim set and description according to auxiliary request 0 filed on 7 October 2024 or according to one of auxiliary requests 1 to 6 filed with its reply to the grounds of appeal.

The respondent further requested that documents D13, D14 and D15 and the associated arguments raised by the appellant in relation to the alleged public prior use of the HP label, the submissions in paragraphs 54 to 74 of the appellant's letter dated 31 January 2024, and the references Ref1 and Ref2, including the associated arguments presented in the appellant's letter dated 15 November 2024, not be admitted into the appeal proceedings.

No submissions or requests were filed in the appeal proceedings on behalf of opponent 2, a party to the appeal proceedings as of right pursuant to Article 107, second sentence EPC.

IV. Document D2 (US 3,264,164) submitted during the opposition proceedings is cited in this decision.

V. Claim 1 as granted reads as follows (the feature numbering used by the board is included in square brackets).

"**[1a]** *A security device comprising:*
[1b] *an array of elongate focusing structures, the elongate axes of which are aligned along a first direction,* **[1c]** *the elongate focusing structures being arranged parallel to one another periodically along a second direction which is orthogonal to the first direction,* **[1d]** *each elongate focusing structure having an optical footprint of which different elongate strips will be directed to the viewer in dependence on the viewing angle, the centre line of each optical footprint being parallel with the first direction; and*
[1e] *an array of image elements overlapping the array of elongate focusing structures, the array of image elements representing elongate image slices of at least two respective images,* **[1f]** *each image slice comprising one or more image elements, and at least one image slice of each respective image being located in the optical footprint of each elongate focusing structure;*
[1g] *wherein the array of image elements is configured such that the distance in the second direction of each image slice from the centre line of an optical footprint in which the image slice is located changes along the first direction;*
[1h] *whereby, at at least some viewing angles, the elongate strip of the optical footprint of each elongate focusing structure which is directed to the viewer includes a portion of a first image slice corresponding to a first image and a portion of a second image slice corresponding to a second image,*
[1i] *such that the first image is displayed by a first region of the security device and the second image is displayed by a second region of the security device which is laterally offset from the first region in the first direction, the positions of the first and second regions along the first direction depending on the viewing angle."*

Claim 15 as granted reads as follows.

"*A method of manufacturing a security device, the method comprising:*
providing an array of elongate focusing structures, the elongate axes of which are aligned along a first direction, the elongate focusing structures being arranged parallel to one another periodically along a second direction which is orthogonal to the first direction, each elongate focusing structure having an optical footprint of which different elongate strips will be directed to the viewer in dependence on the viewing angle, the centre line of each optical footprint being parallel with the first direction; and
overlapping an array of image elements with the array of focusing elements, the array of image elements representing elongate image slices of at least two respective images, each image slice comprising one or more image elements, and at least one image slice of each respective image being located in the optical footprint of each elongate focusing structure;
wherein the array of image elements is configured such that the distance in the second direction of each image slice from the centre line of an optical footprint in which the image slice is located changes along the first direction;
whereby, at at least some viewing angles, the elongate strip of the optical footprint of each elongate focusing structure which is directed to the viewer includes a portion of a first image slice corresponding to a first image and a portion of a second image slice corresponding to a second image, such that the first image is displayed by a first region of the security device and the second image is displayed by a second region of the security device which is laterally offset

from the first region in the first direction, the positions of the first and second regions along the first direction depending on the viewing angle."

VI. The parties submitted the following.

(a) *Ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC: novelty in view of document D2*

(i) *Appellant*

The subject-matter of claims 1 and 15 as granted was not new in view of document D2.

The opposition division's view that document D2 did not disclose feature 1a was incorrect. The intention expressed in a document was not an objective criterion. The skilled person understood that a security device was a device suitable to be used to increase security. This did not imply any specific structural limitations but defined a technical purpose or function. The skilled person knew that the same lenticular device could be used for decorative purposes and for security applications. Even if document D2 focused on decorative purposes, the lenticular device disclosed in document D2 was also suitable for security applications. The term "security device" implied that the claimed device not only had to meet the features specified in the rest of the claim, but that it also had to be designed in such a way that it could be used for the stated purpose, i.e. the protection of an object against unauthorised reproduction. This view was consistent with decisions T 2130/18 and T 573/20. In accordance with decisions T 2130/18, lenticular devices for decorative purposes did not necessarily have to be

suitable for security devices, but they could be. This was also the case here. Document D2 contained explicit information that the parameters were the same as those for the security device envisaged in the patent. According to paragraph [0002] of the patent, there were different types of security device, the common feature of all such devices being that the visual effect exhibited by the device was extremely difficult, or impossible, to copy using available reproduction techniques such as photocopying. This was also the case for the device disclosed in document D2 (see column 1, lines 39 to 41, column 8, lines 51 to 53 and column 9, lines 6 to 9 of document D2). According to paragraph [0111] of the patent, security devices of the sort described in the patent could be incorporated into or applied to any article for which an authenticity check was desirable. The device of document D2 was suitable for protecting an object against unauthorised reproduction. Claim 1 as granted was not restricted as to what object was to be secured. It could be an arbitrary object. Paragraphs [0001] and [0002] of the patent only stated examples of objects to be secured. There was no indication that the patent would impose different or higher requirements for security devices than those met by the optical device of document D2. The respondent had not provided any support for its assertion that articles and documents of value at risk of counterfeiting would always be of a size that made them readily portable and able to be handled easily by a person. This assertion was furthermore incorrect since security devices were also used for large-scale items such as shipping containers or truck trailers. There was no limit as to the size of the security device in claim 1 as granted. Document D2 was not restricted to shower curtains, etc. In column 1, lines 34 to 39, document D2 referred to other similar

sheet materials, usually flexible, of relatively thin, lightweight, inexpensive and yet strong and durable construction and characterised by very striking and unusual colour combinations. In column 8, lines 66 to 70, document D2 disclosed that when films or fabrics were made up in accordance with the teaching of this document, they may be used as wall coverings, auto upholstery, shower curtains, drapes and floor coverings and almost anywhere fabrics or films are utilised. Document D2 disclosed a thickness of, for example, 100 µm (4 mil) (see table in column 3) or 200 µm (8 mil) (see column 2, lines 28 to 30). The latter was stated as a preferred thickness in paragraph [0026] of the patent. Paragraph [0022] of the patent stated that the angle between the lenses and the printed lines was preferably in the range 0.01 to 1 degree. The angles stated in column 4, lines 28 to 44 of document D2 (0.5 and 1 degree) were in this range. Paragraph [0026] of the patent stated a range of the periodicity of 5 to 200 µm. From the table in column 3 of document D2, a period of 100 or 200 µm could be derived. According to paragraph [0027] of the patent, the image elements could be printed. This was also the case in document D2. Document D2 also underlined that the disclosed manufacturing method provided a high level of reproducibility of the optical effect (see Figures 20 and 21 and column 7, lines 13 to 19 and 53 to 55 of document D2).

Feature 1h and the first part of feature 1i were disclosed in the context of Figures 7 and 8 and column 4, lines 28 to 44 of document D2. Figure 1i was disclosed in the context of Figures 7 and 8; column 1, lines 39 to 41; and column 9, lines 6 to 8 of document D2. According to Figures 6, 7 and 8 and column 4, lines 19 to 41 of document D2, the angle

between the lines and the lenses was 0, 0.5 or 1 degree. The embodiment shown in Figures 7 and 8 of document D2 corresponded to the embodiment discussed in paragraph [0034] of the patent in which the first image was a uniform colour and the second image was blank (for example, transparent). The second part of feature 1i ("*the positions of the first and second regions along the first direction depending on the viewing angle*") was disclosed by the explanations in document D2 on the colour flow, Figures 1 to 5 and the reference to the Moiré effect.

The same arguments applied to claim 15 as granted.

(ii) *Respondent*

The subject-matter of claims 1 and 15 as granted was new in view of document D2. This document did not disclose features 1a, 1h and 1i.

Security devices (see feature 1a) were used to protect articles and documents of value such as banknotes, cheques, passports, etc. (see paragraphs [0001] and [0002] of the patent). In decision T 2130/18, the board held that the term "security device" implied technical features that enabled the device to perform the function of a security device, which was to prevent imitation and provide reliable authentication of an object. The board in that decision held that a security device has a variety of "*specific requirements for its structural design, which are stricter and different from those for a lenticular device used for entertainment*". The reasoning of the board in decision T 573/20 was consistent with the board in decision T 2130/18. A skilled person would understand that important requirements for a security device

included (but were not limited to) the size of the device, its lens pitch and thickness, the resolution and precision of its image array, the accuracy of registration between the image array and lens array of the device, the consistency of the manufacturing process, and so on. The relevant skilled person was a person working in that field who understood the term "security device" in this context. Articles and documents of value at risk of counterfeiting were always of a size that made them readily portable and able to be handled easily by a person. For example, banknotes, passports and identity cards were always small enough to fit in a person's pocket or bag. Similarly, certificates and other documents were typically no larger than about A4 size. Security devices were provided on items such as these to enable authentication, and therefore they must be no bigger than the item to be protected and often much smaller. All the products disclosed in document D2 were larger than this. Specifically, all the examples given in column 1, lines 34 to 37 and column 8, lines 67 to 70, i.e. floor and wall coverings, auto upholstery, shower curtains and drapes, typically had lateral dimensions of more than a metre in at least one (and usually two) directions. According to column 1, lines 45 to 48, document D2 concerned fabric-like material as used, for example, for curtains, upholstery, etc. The skilled person understood that such fabric-like materials were not suitable for security devices and had to be cut into pieces according to the desired size of the curtain, etc. None of the products disclosed in document D2 were small enough to fit on an article or document of value. Document D2 did not disclose or suggest cutting the disclosed fabrics or shower curtains into smaller lateral sizes as might be usable in security applications. The skilled person would not

have considered a shower curtain to be a security device. The skilled person might have known that the same lenticular principles could be used for decorative or security devices. However, they would not have used the same device for both purposes. The devices of document D2 were to be used in a purely decorative, large-scale application and were not used to authenticate articles. Security devices were difficult for would-be counterfeiters to imitate or copy but easy to authenticate, having a distinct effect that appeared consistently on all genuine examples of the security device such that a person could easily confirm whether a security device was genuine by observing whether the device produced its intended effect. These requirements for security devices were discussed in paragraphs [0002] and [0111] of the patent and were well known to the skilled person so they were implied in claim 1 as granted. Exact reproducibility was a key feature of the claimed security device, just as for any other security device, and was an implicit requirement of that term. There was nothing to suggest that floor and wall coverings, auto upholstery, shower curtains, drapes and other similar sheet materials disclosed in document D2 could be used to authenticate an object or that they possessed the technical characteristics required of a security device. The examples described in document D2 were too thick and bulky to be used in most security applications, especially those involving paper (for example, banknotes and passports).

Document D2 did not disclose features 1h and 1i. Feature 1i required that the positions of the first and second regions along the first direction depended on the viewing angle. In other words, the first and second regions – which displayed portions of respective first and second images – had to move in the first direction

parallel to the elongate focusing structures as the viewing angle of a user changed. Document D2 disclosed for Figures 6, 7 and 8 that dark stripes moved in the up-down direction. However, there was nothing in document D2 that disclosed that the lenses would run in the same up-down direction. The discussion in document D2 on the optical effect visible on tilting was vague.

The same arguments applied to claim 15 as granted.

(b) *Remittal of the case to the opposition division for further prosecution*

(i) *Appellant*

The case should not be remitted to the opposition division for further prosecution. The objections raised against the respondent's auxiliary requests were mostly based on document D2. This document had been extensively discussed in the appeal proceedings. The board could decide on the auxiliary requests itself in a procedurally efficient way. After a remittal, the opposition division could use different criteria for its discretionary decision on the admittance of the respondent's auxiliary request 0 than the board if the board decided on this. This could put the appellant in a worse position as compared to if the board were to decide.

(ii) *Respondent*

The case should be remitted to the opposition division for further prosecution. The respondent's auxiliary requests had not been addressed in the decision under appeal. The primary object of the appeal proceedings

was to review the decision under appeal in a judicial manner.

Reasons for the Decision

1. **Ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC: novelty in view of document D2**

1.1 In the decision under appeal, the opposition division concluded that document D2 did not disclose feature 1a so that the subject-matter of claim 1 as granted was new in view of this document. In the opposition division's opinion, a security device should not be interpreted as a device suitable for securing a document. To disclose a security device, a document had to disclose not only the physical features of the device and the visual effect achieved but also the intended use as a security device.

1.2 The appellant contests this view and submits that the intention expressed in a document was not an objective criterion. The skilled person understood that a security device was a device suitable to be used to increase security. This did not imply any specific structural limitations but defined a technical purpose or function. The term "security device" implied that the claimed device not only had to meet the features specified in the rest of the claim, but that it also had to be designed in such a way that it could be used for the stated purpose, i.e. the protection of an object against unauthorised reproduction. This view was consistent with decisions T 2130/18 and T 573/20. The device of document D2 was suitable for protecting an object against unauthorised reproduction. There was no

indication that the patent would impose different or higher requirements for security devices than those met by the optical devices of document D2.

1.3 The opposition division did not explain why the skilled person would need to rely on a written disclosure of an intended use to assess whether an optical device is a security device. Claim 1 as granted is directed to a security device as such and not to a method of use of the device. The issue at hand therefore does not hinge on whether document D2 discloses that the device is intended to be used as a security device.

1.4 The respondent refers to decision T 2130/18. The board in that decision held that the term "security device" implied technical features that enabled the device to perform the function of a security device, which was to prevent imitation and provide reliable authentication of an object. The board in that decision held that a security device had a variety of "*specific requirements for its structural design, which are stricter and different from those for a lenticular device used for entertainment*". According to the respondent, the reasoning of the board in decision T 573/20 was consistent with the reasoning in decision T 2130/18. A skilled person would understand that important requirements for a security device included (but were not limited to) the size of the device, its lens pitch and thickness, the resolution and precision of its image array, the accuracy of registration between the image array and lens array of the device, the consistency of the manufacturing process, and so on. The relevant skilled person was a person working in that field who understood the term "security device" in this context. Articles and documents of value at risk of counterfeiting were always of a size that made them

readily portable and able to be handled easily by a person. For example, banknotes, passports and identity cards were always small enough to fit in a person's pocket or bag. Similarly, certificates and other documents were typically no larger than about A4 size. Security devices were provided on items such as these to enable authentication, and therefore they must be no bigger than the item to be protected and often much smaller. All the products disclosed in document D2 were larger than this. Specifically, all the examples given in column 1, lines 34 to 37 and column 8, lines 67 to 70, i.e. floor and wall coverings, auto upholstery, shower curtains and drapes, typically had lateral dimensions of more than a metre in at least one (and usually two) directions. None of the products disclosed in document D2 were small enough to fit on an article or document of value and thus to be usable in security applications. Document D2 did not disclose or suggest cutting its disclosed fabrics or shower curtains into smaller lateral sizes as might be usable in security applications.

1.5 In point 2.1 of decision T 2130/18, the board took the view that a lenticular device used for entertainment was not necessarily suitable for use as a security device. A security device had specific requirements for its structural design, which were stricter and different from those for a lenticular device used for entertainment. Therefore, the wording "security device" limited the possible types of lenticular devices that could be used in the claimed security device, even though no specific feature was expressly defined for this in the wording of the claim. The skilled reader would be able to distinguish the types adapted for use in the claimed security device from those which were not suitable. In point 2.2 of that decision, the board

concluded that the cited prior-art document did not disclose a lenticular device that could be used as a security device as this required some technical specifications not disclosed in that document such as particularly small lenticular focusing elements with a periodicity or pitch adapted to them, as well as specifically adapted image strips.

1.6 In accordance with the considerations set out in points 2.1 and 2.2 of the Reasoning of decision T 2130/18, document D2 discloses a security device within the meaning of feature 1a for the following reasons.

The respondent has not convincingly demonstrated that the skilled person would have understood that the security device of claim 1 as granted must necessarily be suitable for preventing imitation and providing reliable authentication of articles or documents of value of a size that renders them readily portable and able to be handled easily by a person. The skilled person would not have read such size requirements into claim 1 as granted. Neither common general knowledge nor the list of examples stated in paragraphs [0001], [0002] and [0111] of the patent would have led the skilled person to derive such a requirement from claim 1 as granted. Moreover, although document D2 does not disclose cutting shower curtains into smaller lateral sizes, document D2 is not limited to shower curtains. Column 8, lines 66 to 70 of document D2 generally refers to films and fabrics and discloses that the films or fabrics made up in accordance with the teaching of document D2 may be used almost anywhere fabrics or films are utilised. Other passages of document D2 generally refer to films and fabrics as well (see, for example, column 1, lines 45 to 48).

Document D2 is thus restricted neither to shower curtains nor to the use of the disclosed devices for decorative purposes. As set out by the respondent, fabric-like materials generally have to be cut into pieces according to the size desired for a specific use. The same is inherent for the films disclosed in document D2.

From the term "security device" in feature 1a, the skilled person would not have derived any mandatory size requirements of the claimed device that would not be met by the device disclosed in document D2.

Document D2 discloses a thickness of, for example, 200 µm (8 mil) (see column 2, lines 28 to 30). The latter is stated as a preferred thickness in paragraph [0026] of the patent. The respondent submits that the examples described in document D2 were too thick and bulky to be used in most security applications, especially those involving paper (for example, banknotes and passports). However, claim 1 as granted is not limited to a security device for banknotes or passports. It is not apparent that a thickness of between 0.2 and 1 mm would not be suitable for protecting, for example, bulkier objects. This is all the more true since the patent itself explicitly envisages a thickness of 200 µm, i.e. 0.2 mm (see, for example, paragraph [0026] of the patent).

Paragraph [0022] of the patent states that the angle of skew between the image slices and the first direction (of the elongate focusing structures) is preferably in the range 0.01 to 1 degree. The corresponding angles stated in column 4, lines 28 to 44 of document D2 (0.5 and 1 degree) are in this range. Paragraph [0026] of the patent states a range of periodicity of 5 to

200 µm. From the table in column 3 of document D2, a periodicity in this range can be derived (for example, 200 lines per inch corresponds to a period of 127 µm).

Document D2 therefore discloses values for these parameters that, according to the patent, are in the preferred ranges for the claimed security device.

The respondent sets out that security devices were difficult for would-be counterfeiters to imitate or copy but easy to authenticate, having a distinct effect that appeared consistently on all genuine examples of the security device such that a person could easily confirm whether a security device was genuine by observing whether the device produced its intended effect. These requirements for security devices were discussed in paragraphs [0002] and [0111] of the patent and were well known to the skilled person.

As set out above, claim 1 as granted is directed to a security device as such and not to a method of use of the security device. Nor does the claim specify what object is to be protected. Moreover, the manufacture of the optical device of document D2 involves some difficulty, and the optical effect involved is distinct and easy to recognise (see, for example, column 1, lines 39 to 41 and column 9, lines 6 to 8 of document D2 and the discussion of features 1h and 1i below).

Claim 1 as granted is directed to a (single) security device. The respondent's concerns regarding a precise reproduction of a genuine reference device do not allow the conclusion that the claimed (single) security device requires additional technical features that the device disclosed in document D2 would not have.

Moreover, document D2 also discloses measures to render the disclosed devices accurate duplicates (see, for example, column 7, lines 13 to 19 and 53 to 55 of document D2). The respondent has not convincingly demonstrated that the skilled person would have derived a mandatory degree of precision for producing a security device that would not be achieved by the method disclosed in document D2. Even if assuming that there were some security devices used for specific applications that require a high degree of precision, it is not apparent that the skilled person would have read any mandatory structural (or functional) features from the use of the term "security device" into claim 1 as granted (or the method of claim 15 as granted) that the devices and methods disclosed in document D2 would not have.

The case at hand thus differs from the situation underlying decision T 2130/18 in that document D2 discloses parameter values which the patent itself considers to be within the technical specifications of the claimed security device. The board's reasoning in decision T 2130/18 does not allow the conclusion that the devices disclosed in document D2 were not security devices. Nor is this derivable from decision T 573/20. The question is not whether each and every lenticular device used for decorative purposes is suitable for security applications. Nor is the question whether document D2 discloses the use of the disclosed device for security applications. The issue at hand hinges instead on whether the device disclosed in document D2 is suitable for such applications. For the reasons set out above, the skilled person would not have derived any mandatory structural or functional features from

the term "security device" that are not disclosed in document D2. Document D2 thus discloses feature 1a.

1.7 The respondent submits that document D2 did not disclose features 1h and 1i.

Feature 1h and the first part of feature 1i are disclosed in the context of Figure 7 (or Figure 8) of document D2. This figure shows that, at a specific viewing angle, the elongate strip of the optical footprint of each elongate focusing structure (see, for example, Figure 1 of document D2) which is directed to the viewer includes a portion of a first image slice corresponding to a first image (the printed coloured lines) and a portion of a second image slice corresponding to a second image (transparent regions), such that the first image is displayed by a first region (interference bands 28 in Figure 7 of document D2) of the security device and the second image is displayed by a second region of the security device (the region between the bands 28 in Figure 7 of document D2) which is laterally offset from the first region in the first direction (the vertical direction in Figure 7 of document D2). Embodiments in which the first and second images are a uniform colour or transparent are explicitly envisaged in paragraph [0034] of the patent.

With the arrangement disclosed in Figure 7 (or Figure 8) of document D2, the positions of the first and second regions (i.e. the interference bands 28 and the regions between the interference bands 28) along the first direction (i.e. in vertical direction in Figure 7 of document D2) depend on the viewing angle. When the viewer moves from left to right (or *vice versa*) over the surface shown in Figure 7 of

document D2, light from different areas located under the lenses is guided to the observer. Depending on the observation angle, portions of a specific elongate lens guide light from the printed line or the transparent area to the observer. The observation angle at which the area observed through an elongate lens transits from the printed line to the transparent area (or *vice versa*) depends on the relative position of the focal line of the lens and the printed line. This relative position varies along the longitudinal extension of the elongate lenses due to the skew disclosed in document D2 (see Figures 7 and 8 and column 4, lines 28 to 44). Consequently, the observation angle at which a particular position of the elongate lens passes between the printed line and the transparent area also varies along the elongation of the elongate lenses (see second part of feature 1i). This is also consistent with column 1, lines 39 to 41 and column 9, lines 6 to 8 of document D2.

Document D2 therefore discloses features 1i and 1h.

1.8 Document D2 thus discloses features 1a, 1h and 1i under dispute so that the subject-matter of claim 1 as granted is not new in view of this document.

1.9 With respect to claim 15 as granted, the parties referred to their submissions on claim 1 as granted. The board sees no reason to arrive at a different view on claim 15 as granted than on claim 1 (see above). In particular, for the reasons set out above, the appellant has not convincingly shown that the method of manufacturing a security device of claim 15 as granted would necessarily imply lower manufacturing tolerances and a higher precision than the methods disclosed in document D2.

2. **Conclusion and remittal**

2.1 The ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC prejudices the maintenance of the patent so that the decision under appeal has to be set aside.

2.2 The respondent requested that the case be remitted to the opposition division for further prosecution. The appellant requested that the case not be remitted.

The respondent's auxiliary requests 0 to 6 and any objections raised against them by the appellant have not been addressed in the decision under appeal. The appellant submits that its objections against the respondent's auxiliary requests were mostly based on document D2, which was discussed extensively in the appeal proceedings. However, while document D2 has been addressed in the appeal proceedings for claims 1 and 15 as granted, it has not been examined for the amended claims of the respondent's auxiliary requests. The primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (see Article 12(2) RPBA). In the case at hand, this primary object outweighs the appellant's consideration that the board could decide on the auxiliary requests in a procedurally efficient way and the appellant's concern that after remittal the opposition division could use different criteria for its discretionary decision on the admittance of the respondent's auxiliary request 0 than the board if the board were to decide on this.

The board exercises its discretion under Article 111(1), second sentence EPC and Article 11 RPBA

by remitting the case to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division for further prosecution.

The Registrar: The Chairman:

N. Schneider P. Lanz

Decision electronically authenticated