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**Datasheet for the decision
of 5 February 2026**

Case Number: T 0128/24 - 3.4.02

Application Number: 15752879.5

Publication Number: 3121628

IPC: G02B6/00, F21V8/00, F21V33/00,
G02F1/167, F21Y101/00

Language of the proceedings: EN

Title of invention:
ELECTRONIC PAPER DISPLAY

Patent Proprietor:
Guangzhou OED Technologies, Inc.

Opponent:
E ink Corporation

Headword:

Relevant legal provisions:
EPC Art. 56
RPBA 2020 Art. 12(6)

Keyword:

Main request, first auxiliary request - no longer maintained in first-instance proceedings - admitted (no)

Second to fifth auxiliary request - inventive step (no)

Sixth request - not admitted in first-instance proceedings - admitted (no)

Seventh auxiliary request - should have been submitted in first-instance proceedings - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0128/24 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 5 February 2026

Appellant: Guangzhou OED Technologies, Inc.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 November
2023 revoking European patent No. 3121628
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: A. Hornung
P. Guntz

Summary of Facts and Submissions

I. The patentee lodged an appeal against the decision of the opposition division revoking European patent No. 3121628.

II. Opposition had been filed against the patent as a whole and based on the grounds for opposition of Article 100(a) EPC, together with Articles 54 and 56 EPC, and on the grounds of opposition of Articles 100(b) and (c) EPC.

The opposition division had found that the ground for opposition set out in Article 100(a) EPC, together with Article 56 EPC, prejudiced maintenance of the patent according to the main request and to the first to third auxiliary requests then on file. Moreover, the opposition division did not admit into the proceedings the patentee's fourth and fifth auxiliary requests then on file.

III. The patentee (appellant) requested that the opposition division's decision be set aside and that the patent be maintained as granted (main request) or, as an auxiliary measure, be maintained on the basis of the claims according to one of the first to seventh auxiliary requests filed with the statement of grounds of appeal. Only the present second to sixth auxiliary requests are underlying the appealed decision.

IV. In response to the patentee's statement of grounds of appeal, the opponent (respondent) requested that the appeal be dismissed and the decision to revoke the patent be upheld.

V. In a communication annexed to a summons to oral proceedings, the board informed the parties about its

provisional and non-binding opinion according to which the main request and the first, sixth and seventh auxiliary requests should not be admitted into the proceedings and the subject-matter of claim 1 of the second to fifth auxiliary requests lacked an inventive step with respect to document D1 (US 2013/0258705).

The parties' written submission were designated P1 and O1 as follows:

P1: the patentee's statement of grounds of appeal dated 21 March 2024,

O1: the opponent's reply to the statement of grounds of appeal filed with letter dated 26 July 2024.

Reference was made to the following documents:

D1: US 2013/0258705 A1,

D9: US 2012/0002437 A1,

D10: US 2010/0226118 A1,

D13: Internet article "Light reading: How the Kindle Paperwhite Works", The New York Times, 26 December 2012, Graphic - NYTimes.com,

D15: Photographs of the disassembly of the Kobo Glo E-reader model N613, 2012,

D28: Technical Data Sheet "3MTM Optically clear adhesive 8261.8262.8263.8264.8265", January 2011.

VI. The board's provisional opinion as to not admitting the main request and the first auxiliary request into the proceedings was formulated as follows in the board's communication, point **6**:

"6. Main request and first auxiliary request

The board agrees with the opponent that for the reasons provided in O1, point 1.1, "the Proprietor's current 'Main Request' and 'Auxiliary Request 1' should not be admitted

into the proceedings" (Articles 12(2) and (6) RPBA). In essence, the board "shall not admit requests [...] which were no longer maintained in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance" (Article 12(6) second sentence RPBA). In the present case, no such circumstances have been put forward by the patentee and the board does not see any."

VII. The board's provisional opinion as to the lack of inventive step of the subject-matter of claim 1 of the second to fifth auxiliary requests was formulated as follows in the board's communication, points **7** to **10**:

"7. Second auxiliary request

The subject-matter of claim 1 seems to lack an inventive step in view of D1 (Article 56 EPC).

7.1 Reference is made to the numbering of the features **1** to **14** of claim 1 of the second auxiliary request (i.e. the main request underlying the appealed decision) as used in the appealed decision, point 4.

7.2 Distinguishing features in view of D1

The board, in its preliminary view, agrees with the opposition division that the subject-matter of claim 1 differs from the electronic paper display of D1 by features **4'** and **13** (appealed decision, page 13, first to third paragraph). However, contrary to the appealed decision, the board considers that feature **6** is implicitly disclosed in D1, so that features **4'** and **13** are the only distinguishing features with respect to D1.

7.3 Patentee's arguments for novelty of features **4'**, **6** and **9 to 14**

7.3.1 According to P1, page 15, third paragraph, the patentee is of the opinion that D1 does not disclose features **4'**, **6** and **9 to 14** of claim 1 of the second auxiliary request.

This assertion of the patentee is not justified by thorough arguments in the subsequent paragraphs of P1 dealing with claim 1 of the second auxiliary request, but rather the patentee seems to refer to the explanations on novelty of the subject-matter of claim 1 of the main request in relation to a different document D15 (P1, point 3.2, pages 7 to 11) as well as those on inventive step of the subject-matter of claim 1 of the main request in view of D1 (P1, point 3.3.2, pages 12 and 13).

7.3.2 In the submissions dealing with novelty in view of D15, the patentee submits that the "display area" is "the area of the 'display module' and 'light guide plate' which is not covered by a housing or other elements (such as the 'driving circuit board')" (P1, page 8, penultimate paragraph). Moreover, the "'light area' is precisely the illuminated area without the poorly illuminated or non-illuminated areas" (P1, page 8, last paragraph). Still further, according to the patentee, "feature **9** makes a decisive contribution to an even light distribution" (P1, page 9, last paragraph).

7.3.3 The patentee further asserts that "[n]either a 'display area' nor a 'light area' is disclosed in D1" and that "D1 discloses a 'light guide plate' without any tothing" because "[i]n D1 a separate housing (reference number 100) ensures light scattering which comprises at an

exit surface similar 'tooth-shaped patterns'" (P1, page 12, first paragraph).

7.4 The board provisionally is not convinced by the patentee's arguments.

7.4.1 It would appear that the patentee interprets the general terms "display area", "light area", "dark area" and "light guide plate" in a narrower way than what is actually expressed by the general terms themselves. In the board's view, these terms have to be interpreted more broadly, namely as broadly as technically reasonable. See also the opponent's comments (O1, pages 12 and 13).

7.4.2 In particular, the term "display area" designates any area displaying information and the term "light area" designates any area formed in front of the LEDs, just as defined in feature **8**. Since the LEDs (400) of D1 are directed towards the light guide plate (700, 100), they implicitly illuminate a light area which corresponds to the entire surface of the light guide plate used for displaying information. In other words, the display area (used for displaying information) is completely inside the light area (i.e. the area illuminated by the LEDs), just as claimed in feature **9**. Incidentally, in this context, the so-called "dark area" in D1 is the area near and between the LEDs. Accordingly, feature **12** of claim 1 is also disclosed in D1.

7.4.3 Moreover, the light guide plate of claim 1 is not restricted by any technical features to a light guide plate made of a *single* piece of material. Therefore, the board agrees with the opposition division (appealed decision, page 11, fifth paragraph) that the light guide plate of D1 is formed by a combination of a first body (700) and a second body (100) (D1, [0045], [0048], figures

10 and 11). It follows that the light diffusing microstructures (300) of D1, which are formed on the entrance surface of the second body (100) (see e.g. [0037], figures 1 and 2), are formed, as claimed, on the in-light surface of the light guide plate and anticipate features **10**, **11** and **14** of claim 1, as explained in the appealed decision (page 12, first, second and fourth paragraphs).

7.5 Inventive step related to feature **4'** in view of D1

7.5.1 As stated in the appealed decision, page 13, fourth paragraph, the objective technical problem may be defined as "how to fix the light guide plate to the reflective display panel".

It is common general knowledge that a preferred manner of fixing together optical plates of a display device, such as a light guide plate (100, 700) and a reflective display panel (800), consists in using some optical clear adhesive to glue the plates together. As stated in the appealed decision, page 13, penultimate paragraph, "[t]he use of optically clear adhesive layers was widespread at the priority date of the application as evidenced, e.g. by document D28".

Therefore, in order to solve the objective technical problem, the board, in its preliminary view, considers it obvious that the skilled person would use an optical clear adhesive to glue together the light guide plate (100, 700) and the reflective display panel (800) of D1. It is to be noted that it is common general knowledge that the alternative method of holding together the two plates with mechanical fixing means can create a layer of air between the plates, causing optical problems, such as parasitic interference and loss of light transmission. Therefore,

the use of an adhesive is the most obvious way of fixing together the optical plates.

7.5.2 Patentee's arguments for inventive step of feature **4'**

- (a) According to the patentee, "the skilled person could also choose any kind of mounting. For example, the most obvious fastening would be the fastening to the edges of the display known in the prior art" (P1, paragraph bridging pages 16 and 17).

The board understands the patentee's argument as if it would refer to mechanical fixing means. For the time being, the board is not convinced by this argument at least for the optical issues arising when using mechanical fastening means (see point **7.5.1** above). In addition, it would appear that the skilled person would refrain from using mechanical fixing means because they could increase the size, weight and cost of the electronic paper display.

- (b) The patentee's general argument that "any synergistic effects were ignored" and that feature **4'** may not be considered in isolation cannot be followed by the board. No further technical effect due to some interaction of the adhesive layer with the other features of claim 1 and going beyond the effect of fixing together the display module and the light guide plate seems to be related to feature **4'**.

- (c) The patentee put forward that there is a risk of forming air bubbles in the adhesive layer which "would have a very high effect on this front-light illumination of the display" (P1, page 17, last paragraph). Therefore, the skilled person "would disregard the OCA [optical clear adhesive] disclosed

in D28 in an EPD [electrophoretic display] with frontlight" (P1, page 18, first paragraph).

The board is not convinced by this argument, since it has to be assumed that the skilled person knows how to glue together two optical plates, such as an electrophoretic display and a light guide plate, without air bubbles appearing. In particular, the skilled person would obviously select an adhesive suitable for gluing together an electrophoretic display and a light guide plate (and which is not necessarily the adhesive of D28) without air bubbles in the adhesive layer.

7.6 Inventive step related to feature **13** in view of D1

7.6.1 As stated in the appealed decision, page 13, fifth paragraph, the objective technical problem may be defined as "how to drive and fix the LEDs". As further stated by the opposition division, the "two problems can be considered partial problems [...] independently solved by different sets of distinguishing features".

While the board in its preliminary view concurs with the opposition division and the opponent that feature **13** does not involve an inventive step, the board doubts whether it is necessary for the skilled person to refer to any of the documents referred to by the opposition division and the opponent (i.e. documents D9, D10 or D13, see the appealed decision, page 14, first to third paragraph; notice of opposition, points F.2.11 to F.2.14, referred to in O1, page 19, penultimate paragraph).

In order to fix the LEDs (400) of D1 in a position as shown in figure 11, i.e. at a certain distance in front of the light diffusing microstructures (300), several obvious

and equivalent possibilities, forming part of mental furniture of the skilled person, exist. One of these possibilities is to fix the implicitly disclosed driving circuit board with the LEDs to the top surface of the second body (100), just as defined in feature **13**. This method of fixing the LEDs by gluing the circuit board directly onto the light guide plate requires no additional fixtures and therefore reduces the number of fixing elements to a minimum. It has the immediately apparent additional advantage that the position of the LEDs relative to the diffusing microstructures is directly defined by the driving circuit board itself and remains stable.

The selection of a method of mounting LEDs from a plurality of known and obvious equivalent methods does not involve an inventive step. Therefore, feature **13** does not seem to contribute to the inventiveness of the subject-matter of claim 1.

7.6.2 Patentee's arguments for inventive step of feature **13**

(d) According to the patentee, the skilled person would not consider D9 for solving the objective technical problem because D9 discloses an LCD display with backlight, which clearly differs from the front-light configuration defined in claim 1. "In 'frontlight' devices, the skilled person would assume that the area above the display should be kept free, since here a flat housing usually directly adjoins" (P1, page 18, third paragraph).

The board cannot follow the patentee's argument. Fixing the circuit board to the top surface of the second body (100) of D9 leaves free the display area corresponding to the light guide plate (700).

(e) The patentee refers to "non-negligible synergistic effects between the arrangement of the 'driving circuit board' and the 'optical clear adhesive layer'" (P1, page 18, penultimate paragraph).

The board currently is unable to see any technical effect related to the distinguishing features **4'** and **13** going beyond those related to the respective objective technical problems defined in points **7.5.1** and **7.6.1** above.

8. Third auxiliary request

The subject-matter of claim 1 seems to lack an inventive step in view of D1 (Article 56 EPC).

8.1 Reference is made to the numbering of the features **1** to **16** of claim 1 of the third auxiliary request (i.e. first auxiliary request underlying the appealed decision) as used in the appealed decision, point 7.

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that it comprises features **2'**, **15** and **16**.

8.2 Inventive step related to feature **2'** in view of D1

8.2.1 D1, [0048], discloses an electrophoretic display (EPD). It seems to be common general knowledge that an EPD comprises inherently a substrate layer, a microcapsule EPD layer and a transparent electrode layer in sequence. Since feature **2'** seems to be disclosed in D1, it cannot contribute to the inventive step of the claimed electronic paper display.

8.2.2 Patentee's argument for inventive step of feature **2'**

According to the patentee, "the use of the substrate (in particular as a carrier) has an advantageous effect on the overall assembly and arrangement of the individual components with respect to each other" (P1, page 20, third paragraph).

The board is unable to follow the patentee's argument. In particular, no particular effect due to the use of a general substrate (which could be any kind of substrate) in the EPD can be recognized.

8.3 Inventive step related to features **15** and **16** in view of D1

8.3.1 The technical effect of features **15** and **16** is to define the dimension of the tooth-shaped pattern. According to the appealed decision, page 17, second paragraph, the objective technical problem solved by features **15** and **16** is how to dimension the tooth-shaped pattern.

Document D1, [0034], discloses some dimensional data of the illumination microstructures (200) on the exit surface (120) of the second body (100): "curvature radius R1 is about 25 μm , the pitch P1 is about 45 μm ", but remains silent about the dimension of the light diffusing microstructures (300) on the entrance surface (110) of the second body (100). Depending on the specific technical circumstances (size of the EPD, number of LEDs, distance between LEDs, uniformity of the light emitted by each LED, desired overall uniformity of the electronic paper display, etc.), the skilled person would select the appropriate dimension of the light diffusing microstructures (300). In view of common general knowledge

and in view of the dimensions of the illumination microstructures (200) of D1, the ranges defined in features **15** and **16** appear to define typical values for the dimension of a tooth-shaped pattern whose purpose is to uniform the light emitted by LEDs. Even though the dimensions defined in features **15** and **16** are larger than those of the illumination microstructures (200) of D9, the board is unable to relate any surprising technical effect to this difference of size. Therefore, it would appear that no inventive step is related to features **15** and **16**.

8.3.2 The patentee's argument essentially consists of denying that the skilled person would deduce the dimensions defined in features **15** and **16** from the prior use called "Kobo Glo" in the appealed decision.

The board is not convinced by the patentee's arguments, not only because of the opponent's reasons (O1, pages 22 and 23), but also because features **15** and **16** seem to define merely typical dimensions of a tooth-shaped pattern to render incident light more uniform.

9. Fourth auxiliary request

The subject-matter of claim 1 seems to lack an inventive step in view of D1 (Article 56 EPC).

9.1 Reference is made to the numbering of the features **1** to **17** of claim 1 of the fourth auxiliary request (i.e. second auxiliary request underlying the appealed decision) as used in the appealed decision, point 10.

Claim 1 of the fourth auxiliary request differs from claim 1 of the third auxiliary request in that it comprises feature **17**.

9.2 Inventive step related to feature **17** in view of D1

D1, [0040] to [0043], figures 6 to 8, seems to disclose light diffusing microstructures (320, 330) in which the distance between two adjacent projections or recesses is equal to 0, i.e. the lower limit of the numerical range defined in feature **17**. Since feature **17** seems to be disclosed in D1, it cannot contribute to the inventive step of the claimed electronic paper display.

However, even if feature **17** were not disclosed in D1, the board is of the preliminary opinion that, as with the dimensions of the tooth-shaped pattern defined in features **15** and **16**, feature **17** defines typical values of the distance between two adjacent projections or recesses and, therefore, lacks an inventive step for reasons similar to those given in point **8.3.1** above.

9.2.2 The patentee seems to argue that the teeth shown on the in-light surface (110) of the second body (100) of D1 are not to be equated with the tooth-shaped pattern of claim 1, that they achieve a completely different effect and that they are considerably further apart from each other (P1, page 23, third paragraph).

The board, in its preliminary view, does not agree with the patentee's argument that the light diffusing microstructures (300) of D1 (shown in figures 1, 2 and 5 to 11) would not fall under the expression "tooth-shaped pattern". There does not appear to be any technical feature in claim 1 which precludes such an interpretation of claim 1.

10. Fifth auxiliary request

The subject-matter of claim 1 seems to lack an inventive step in view of D1 (Article 56 EPC).

10.1 As noted by the opponent, "the Proprietor has not provided any reasoning in support of the Auxiliary Request 5 at all" (O1, page 26, first paragraph; highlight in the original). For the time being, the board concurs with the opponent that the admittance into the proceedings of any future submission of the patentee in favour of inventive step of claim 1 of the fifth auxiliary request would have to be discussed under Article 13(1) RPBA. The admittance of Auxiliary Request 5 itself into the proceedings is subject to Article 12(3) and (5) RPBA.

10.2 In case that the fifth auxiliary request would be admitted into the proceedings, the board informs the parties about the patentability of the claimed subject-matter as follows:

10.2.1 Reference is made to a new numbering of features **1** to **17'** of claim 1 of the fifth auxiliary request (i.e. third auxiliary request underlying the appealed decision). The new numbering is introduced by the board in order to distinguish feature **17** of the fourth auxiliary request and the corresponding feature **17'** of the fifth auxiliary request.

Feature **17** of the fourth auxiliary request reads:

"a distance between two adjacent arc-shaped projections, arc-shaped recesses, angle-shaped projections, or angle-shaped recesses is in a range of 0-0.5 mm".

Feature **17'** of the fifth auxiliary request reads:

"a distance between two adjacent arc-shaped projections, arc-shaped recesses, or angle-shaped recesses is in a range of 0-0.5 mm".

10.2.2 Feature **17'** is disclosed in D1 and, therefore does not contribute to the inventiveness of the claimed electronic paper display for the same reasons as given in point **9.2.1** above".

VIII. The board's provisional opinion as to not admitting the sixth and seventh auxiliary requests into the proceedings was formulated as follows in the board's communication, points **11** and **12**:

"11. Admittance - sixth auxiliary request

In its preliminary view, the board intends to exercise its discretion under Article 12(6) RPBA by not admitting the sixth auxiliary request to the proceedings.

11.1 Reference is made to the numbering of the features **1** to **14** of claim 1 of the sixth auxiliary request (i.e. fourth auxiliary request underlying the appealed decision) as used in the appealed decision, point 16.

Claim 1 of the sixth auxiliary request differs from claim 1 of the second auxiliary request in that it comprises features **2'** and **4"**.

11.2 Appealed decision

11.2.1 The opposition division decided not to admit to the proceedings the then fourth auxiliary request, which was submitted only during the oral proceedings before the opposition division.

The then fourth auxiliary request was filed by the patentee during the oral proceedings as "auxiliary request 6" at 16:57, replacing a fourth auxiliary request filed by the patentee during the oral proceedings as "auxiliary request 4" at 16:57 (see minutes of the oral proceedings, points 56 and 75 and annexes).

11.2.2 According to the appealed decision, page 25, penultimate paragraph, "the new added feature [4]" does not appear, *prima facie*, to overcome the inventive step objections as the claimed adhesives appear to be standard. However, the opponent may need additional time to prove this point". Moreover, "[a]pplying the principle of 'clear allowability' according to Guidelines H-II, 2.7.1 it is not immediately apparent to division [*sic*] that the amendments successfully overcome the Article 56 EPC objections without giving rise to new ones. Moreover, balancing the proprietor's interest in maintaining their patent and the EPO's interest in bringing the opposition procedure to a close in an effective way in accordance with Guidelines H-III 3.3.2.1 the admission of the fourth auxiliary request is not justified" (appealed decision, page 26, second paragraph).

11.3 According to Article 12(6) first sentence RPBA, the board shall not admit requests which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

The board is currently not able to see an undue exercise of discretion in the way the opposition division handled the case. Nor are there any circumstances of the appeal case justifying the admittance of the sixth auxiliary request. Therefore, following the principle laid down in

the decision G7/93, point 2.6, and applied, for instance, in T28/10, point 2.1, principle according to which the exercise of discretion by the first instance should only be overturned by the board in case wrong criteria were applied or the discretion was exercised unreasonably, the board is minded to maintain the opposition division's decision and not to admit the sixth auxiliary request into the proceedings under Article 12(6) RPBA.

12. Admittance - seventh auxiliary request

In its preliminary view, the board intends to exercise its discretion under Article 12(6) RPBA by not admitting the seventh auxiliary request to the proceedings.

The seventh auxiliary request, comprising an amended claim 1, was filed for the first time with the patentee's statement of grounds of appeal.

According to Article 12(2) RPBA, a party's appeal case, in view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, has to be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.

Under Article 12(6) second sentence RPBA the board "shall not admit requests ... which should have been submitted in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance".

The subject-matter of claim 1 of the then higher-ranking requests was found - or at least *prima facie* found - by the opposition division not to involve an inventive step in view of D1 as closest prior art. Therefore, since the

objection of lack of inventive step in view of D1 as closest prior art was known to the patentee during first-instance proceedings and also discussed in detail between the parties during the oral proceedings in the context of inventiveness of the then higher ranking requests, the patentee had ample occasion to file the present seventh auxiliary request during first-instance proceedings.

The patentee has not presented any circumstances justifying the filing of the seventh auxiliary request only with the statement of grounds of appeal, nor does the board see any".

- IX. With letter dated 14 January 2026 the patentee informed the board that it "will not attend the oral proceedings scheduled for 4 February 2026".
- X. Accordingly, the oral proceedings were cancelled.

Reasons for the Decision

- 1. In the communication annexed to the summons to oral proceedings, the board expressed its preliminary and non-binding view, along with the underlying reasons (see points VI to VIII above) that the main request and the first, sixth and seventh auxiliary requests should not be admitted into the proceedings and the subject-matter of claim 1 of the second to fifth auxiliary requests lacked an inventive step with respect to document D1.
- 2. The patentee did not file any submissions to rebut the board's preliminary opinion.

3. The board sees no reason to deviate from its preliminary opinion regarding the admission of requests and the assessment of inventive step of the claimed subject-matter, which therefore becomes final.
4. It follows that the main request and the first, sixth and seventh auxiliary requests are not admitted into the proceedings and that the subject-matter of claim 1 of the second to fifth auxiliary requests lacks an inventive step with respect to document D1.
5. For the above reasons, the board comes to the conclusion that all of the patentee's requests are either not allowable or not admitted into the proceedings and that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated