Datasheet for the decision of 1 March 2013

Case Number: T 1485/10 - 3.2.03
Application Number: 07009146.7
Publication Number: 1854922
IPC: E01F 9/053

Language of the proceedings: EN

Title of invention:
Block for road kerb equipped with reflector elements and process for manufacturing such block

Applicants:
Di Maio, Attilio
Rutigliano, Fabrizio C.E.

Headword: -

Relevant legal provisions:
EPC Art. 54, 56

Keyword: "Novelty and inventive step (no)"

Decisions cited: -

Catchword: -
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DECISION
of the Technical Board of Appeal 3.2.03
of 1 March 2013

Appellant I: Di Maio, Attilio
(Applicant 1)
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I-10040 San Gillio TO (IT)

Appellant II: Rutigliano, Fabrizio C. E.
(Applicant 2)
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 12 February 2010 refusing European patent application No. 07009146.7 pursuant to Article 97(2) EPC.

Composition of the Board:
Chairman: U. Krause
Members: E. Frank
K. Garnett
Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division dated 2 February 2010 and posted on 12 February 2010 to refuse European application No. 07 009 146.7 pursuant to Article 97(2) EPC. The examining division held that the subject-matter of claim 1 as filed on 21 December 2009 did not meet the requirements of novelty over US-A-3 253 971 (= D1).

II. The appellants (applicants) filed a notice of appeal on 20 April 2010, paying the appeal fee on the same day. The statement of grounds of appeal was filed on 17 June 2010.

III. A communication dated 21 November 2012 pursuant to Article 15(1) RPBA was issued together with a summons to attend oral proceedings. The appellants were inter alia notified that, during the oral proceedings, the issue of basis for amendments of claim 1 and, if claim 1 was found to be novel, of inventive step, would also arise. The oral proceedings were duly held on 1 March 2013. As announced by letter dated 28 February 2013, no one was present on behalf of the appellants.

IV. In their statement of grounds of appeal, the appellants in effect requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims which had been filed on 21 December 2009.

V. The wording of claim 1 as filed on 21 December 2009 reads as follows:
"1. Block (1) for road kerb characterised in that it comprises a block body (3) and at least one element of reflector material (5), said element of reflector material (5) being directly fixed onto at least a side or upper external surface of said block body (3) by interposing at least one layer of a gluing agent (9) without using any groove housing said element of reflector material (5), said element of reflector material (5) being a ready-to-use band of a flexible film."

VI. The appellants submitted essentially the following arguments:

The reflective element or layer of D1 had to be newly made each time onto the paved surface, whereby a film of plastisol was applied to a release paper or other surface, which was a very time exhausting procedure: cf. D1; column 4, lines 44 to 48 (In the statement of grounds of appeal the words quoted are "applied to realise a paper" but this appears to be a simple transcription error). Moreover, the described plastisol contained plasticizer and a first resin, which were incompatible with an adhesive second resin of the plastisol. Thus, claim 1 differed from D1's disclosure in that the reflective band of the block was an "off-the-shelf" and "ready-to-use" flexible film, which could be easily purchased on the market and directly and quickly be fixed onto the block. Therefore, claim 1 was novel over D1.
Reasons for the Decision

1. The appeal is admissible.

2. Novelty and inventive step  
(Articles 54 and 56 EPC)

2.1 The document D1 relates to a reflective surface, eg of a pavement, which reflects a light beam in the dark, for example to act as a traffic warning: cf. D1; column 1, lines 10 to 13, and lines 35 to 37; and figure 1. Moreover, a band of a flexible film constitutes D1's reflective marker: cf. D1; column 2, lines 65 to 68; column 4, lines 44 to 56; and figure 1.

2.2 Contrary to the appellants' view, the marker described in D1 may be preformed and marketed with an adhesive covering, ie is available "ready-to-use" on the market, and can be later directly attached to a pavement or other surface at any time: see in particular column 1, lines 38 to 44; column 4, lines 55 and 56; and figures 1 and 2 of D1. In addition, no incompatibilities of resins of the plastisol composition are derivable from D1: cf. column 3, lines 55 to 72, and column 4, lines 44 to 54.

Hence, the Board follows the decision of the examining division that the use of a "ready-to-use" band is derivable from document D1.

2.3 Apart from the question of whether the reflective marker of D1 can be understood as being "ready-to-use", the appellants do not dispute that otherwise the subject-matter of claim 1 is disclosed by D1. For the
above reasons, thus D1 deprives claim 1 of novelty: cf. point 2.2 of this decision.

However, the Board notes that in the impugned decision the pavement block body as shown in figure 1 of D1 is implicitly considered to be suitable for a road kerb. In the view of the Board, even if it were to be asserted that a block body of D1's figure 1 could not directly and unambiguously form a block for a road kerb as required by claim 1, ie a pavement edge, nevertheless to fix the reflective band of D1 onto the upper external surface of a pavement edge block for reasons of traffic warning would be a trivial measure only, and thus be obvious for the skilled person. Even in this case, therefore, claim 1 would not involve an inventive step.

2.4 Whether or not claim 1 is actually based on the application as filed thus can be left undecided.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

C. Spira

U. Krause