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D E C I S I O N
of 28 February 2002

Case Number: T 0483/01 - 3.4.2

Application Number: 93109546.7

Publication Number: 0574885

IPC: G03B 13/12, G03B 17/20

Language of the proceedings: EN

Title of invention:
Portrait photographic camera

Applicant:
FUJI PHOTO FILM CO., LTD

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2), 54, 56,

Keyword:
"Amendments - no infringement of Article 123(2)"
"Novelty - yes"
"Inventive step - yes"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0483/01 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 28 February 2002

Appellant: FUJI PHOTO FILM CO., LTD.
210 Nakanuma
Minami-Ashigara-shi
Kanagawa-ken (JP)

Representative: Grünecker, Kinkeldey
Stockmair & Schwanhäusser
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Maximilianstrasse 58
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 7 December 2000
refusing European patent application
No. 93 109 546.7 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Turrini
Members: A. G. M. Maaswinkel
G. E. Weiß

Summary of Facts and Submissions

I. The appellant lodged an appeal, received on 19 February 2001, against the decision of the examining division, dispatched on 7 December 2000, refusing the European patent application 93 109 546.7. The fee for the appeal was paid on 19 February 2001 and the statement setting out the grounds of appeal was received on 17 April 2001.

The examining division objected that the subject-matter of claim 1 was not patentable under Article 52(1) EPC because it did not involve an inventive step (Article 56 EPC), having regard to the following documents:

(D2) US-A-4 776 796

(D4) US-A-4 072 969.

II. In reply to a communication of the board, the appellant filed with a letter dated 8 February 2002 a new set of claims 1 to 9 and amended pages of the description.

III. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

Claims: No. 1 to 9, according to the request as filed with the letter dated 8 February 2002;

Description: pages 2, 6, 7 and 10 to 16 as originally

filed;
pages 1, 3, 4, 5, 8 and 9 filed with the
letter dated 8 February 2002;

Drawings: Figures 1 to 9 as originally filed.

IV. The wording of claim 1 according to the main
request reads as follows:

"A camera incorporating a taking lens assembly (7, 26)
having a focal length, for taking a picture of a human
head onto a photographic film, comprising:

a viewfinder (10, 32) for observing said human head;
and

index means seen through the viewfinder and indicated
within a field frame (16; 116; 34; 134) to be imaged
onto said photographic film;

characterized by

the index means comprising at least one pair of index
marks; wherein

the one index mark of each pair of index marks is
arranged in the upper part (17; 117; 35a, 37a; 135a,
136a, 137a) of the field frame, and the other index
mark of each pair of index marks is arranged in the
lower part (18; 118; 35b, 37b, 135b, 136b, 137b) of the
field frame;

the two index marks of each pair of index marks are

constituted of rectangular marks having a vertical width defining top and bottom edges and arranged horizontally and parallel to one another in the field frame;

the two index marks of each pair of index marks are spaced apart from each other by a distance, the distance being predetermined such that the top end of the human head to be imaged onto the photographic film is located between the top and bottom edges of the index mark in the upper part of the field frame and the bottom end of the human head is located between the top and bottom edges of the index mark in the lower part of the field frame."

Claims 2 to 9 are dependent on claim 1.

- V. The appellant's arguments may be summarised as follows:

Document D2 discloses a portrait camera with the features of the preamble of claim 1 and represents the closest prior art. In contrast to the apparatus according to claim 1, the index means in the camera system disclosed in D2 has an oval outline of "one of at least eight common facial shapes" (see D2, column 2, lines 11 to 15). In addition, according to D2 the camera is operated by moving it "so that the face of the user appears *exactly* within the facial outline viewing guide 42" (column 4, lines 4 to 5; see also Figure 4). This oval shape cannot be identified as "two index marks" within the meaning of those in claim 1. Furthermore the index marks in claim 1 have a vertical width for providing a tolerance of placing the human head, which is not the case with the facial outline

guide in D2.

These difference between the subject-matter of claim 1 and the system known from D2 solve the objective problem to provide a viewing guide with certain tolerance for positioning the head to be photographed, so that interchanging of viewing guides can be avoided. This problem is not known from D2, nor is the claimed solution obvious, because D2 teaches to *avoid* a tolerance zone by teaching that the outline should be selected to *exactly* conform with the user's face. Document D4, cited by the examining division, discloses a camera with marking means, but these marks disclosed in D4 are provided for a rangefinder system and do also not provide a tolerance for the positioning of a head to be photographed. Therefore even a combination of these documents does not lead to the claimed solution.

Reasons for the Decision

1. The appeal is admissible.

2. *Article 123(2) EPC*

2.1 Claim 1 differs from claim 1 as originally filed by the definition of the shape and the location of the index means. These features find their support in the original claims 3 and 4; in particular in the passage on page 7, lines 1 to 15 of the description; and in the corresponding Figures 3 and 4. Therefore the claim is fairly supported by the original disclosure.

2.2 Other minor amendments in the dependent claims

equally find their support in the application as originally filed.

2.3 Therefore the Board is satisfied that the application documents are in conformity with Article 123(2) EPC.

3. Novelty

3.1 Document D2 discloses a camera incorporating a taking lens assembly having a focal length, for taking a picture of a human head onto a photographic film (*column 2, lines 7 to 17, column 4, lines 10 to 11*), comprising a viewfinder (*column 4, line 1*) and index means (*column 4, lines 2 to 9; Figure 4*). The index means 42 in the apparatus disclosed in D2 (*scaled facial outline viewing guide*) is seen through the viewfinder field frame 40 (*Figure 4*). The index means 42 differs from the index means defined in the characteristic portion of claim 1 in that the index means in the system of D2 has a "common facial shape" (*column 4, lines 2-3*) and is formed "in the outline of one of at least eight common facial shapes" (*column 2, lines 11 - 13*), whereas the index means defined in claim 1 comprises at least one pair of rectangular index marks located in the upper and lower part of the field frame. Therefore the subject-matter of claim 1 is novel over the teaching of D2.

3.2 Document D4 discloses a ranging system for a camera viewfinder. In accordance with a focusing movement of the objective lens marking or index means with *varying* size are reflected into the

viewfinder. By using the known size of a person's head as a reference and adjusting the size of the marks (*Figures 2 - 4: circle*) or the distance between the marks (*Figures 5 - 10: two lines*) in the viewfinder to this reference size, the objective lens is focused. Document D4 does not disclose that the index marks have a vertical width defining top and bottom edges which should allow the positioning of the top and bottom end of the head to be photographed. Furthermore the distance between the index marks in the apparatus of D4 is *variable*, and therefore is not predetermined as defined in claim 1, because the term "predetermined" implies that the distance is fixed at a pregiven value. Hence document D4 does not anticipate the subject-matter of claim 1.

3.3 The further documents on file appear less relevant for the question of novelty.

3.4 Therefore the subject-matter of claim 1 is novel within the meaning of Article 54 EPC.

4. *Inventive step*

4.1 Closest prior art

In selecting the closest prior art, where available a document to be considered should be directed to the same purpose or effect as the invention. This implies that the document should relate to the same or a similar technical problem. Of the documents on file both D2 and D4 refer to "taking a picture of a human head to be photographed". Document D2 discloses a personalized hairstyle display wherein a customer's

face is to be exactly overlaid with a number of hairstyles. This is achieved by ensuring that the customer's face is photographed with a camera with a scaled facial outline viewing guide. Therefore, similar to the present patent application, document D2 is related to portrait photography and addresses the problem of obtaining a correct positioning of the person's face to be photographed on the picture. In contrast to this, document D4 is not primarily related to portrait photography, rather it discloses a range finder for a camera, wherein the size of a human head at an arbitrary distance from the camera is used as a reference object of approximately known size, which enables the focusing of the camera's objective lens by superposing in the viewfinder a moving mask around this head. Hence the Board considers that the closest prior art is shown in document D2.

4.2 Problem to be solved

The subject-matter of claim 1 differs from the portrait camera according to D2 in the provision of the index means as a pair of index marks, which are arranged at a predetermined distance in the upper and the lower part of the viewfinder and each are comprised of rectangular boxes. The widths of these boxes define a tolerance zone. The technical problem to be solved by these differences may be formulated in providing a portrait camera comprising a single viewfinder with appropriate index means, thereby producing well centered portraits with correct dimensions.

4.3 Document D2

As is pointed out by the appellant, in document D2 a

number of measures is disclosed to assure that the face of the photographed customer accurately fits in size to the hairstyles to be overlaid to the picture (*column 2, lines 7 to 17: offer at least eight common facial shapes as viewing guides; and column 4, lines 1 to 9: to move the camera so that the face of the user appears exactly within the facial outline viewing guide*).

Document D2 emphasises the importance of a good fit between a photographed face and the hairstyle templates in order that the combination will be appealing to the customer. No suggestion are found in D2 to modify that apparatus by including in the viewfinder index means as defined in claim 1, because this modification, the index means providing a tolerance zone for portrait photography, would imply relaxing the requirements for fitting the customer's face to the hairstyle templates which is contrary to the teaching of D2.

4.4 Combination of D2 and D4

A combination of the teachings of D2 and D4 does not appear obvious, because the viewfinders disclosed in the two documents do not appear to be readily combinable. On one hand, the viewfinder disclosed in D2 is provided with the scaled facial outline viewing guide 42 (*See Figure 4 of D2*) and the camera must be moved in order to obtain an exact fit (*column 4, lines 4 to 5*), which implies that as soon as a particular viewing guide is selected, its size in the system of D2 remains *fixed*. On the other hand, the size and position of the marks in the viewfinder system of D4 must be *variable*, because they are used for determining the correct focusing of the objective lens. Even if the skilled person were to consider to include a rangefinder system into the camera of D2, for

instance based on the disclosure in D4, he would still not arrive at the subject-matter defined in claim 1, because neither D2 nor D4 disclose rectangular index marks having a vertical width and arranged at a predetermined distance in the viewfinder.

4.5 The further documents similarly also do not give any hints to the solution defined in claim 1.

4.6 Therefore claim 1 is neither anticipated nor made obvious by the available prior art. Claims 2 to 9 are dependent on claim 1 and therefore, their subject-matters also involve an inventive step.

5. For the above reasons, the Board finds that the appellant's request meets the requirements of the EPC and that a patent can be granted on the basis thereof.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent on the basis of the following documents:

Claims: No. 1 to 9, according to the request as filed with the letter dated 8 February 2002;

Description: pages 2, 6, 7 and 10 to 16 as originally

filed;
pages 1, 3, 4, 5, 8 and 9 filed with the
letter dated 8 February 2002;

Drawings: Figures 1 to 9 as originally filed.

The Registrar:

The Chairman:

P. Martorana

E. Turrini