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D E C I S I O N
of 26 May 2003

Case Number: T 0841/02 - 3.3.1

Application Number: 98124536.8

Publication Number: 0927753

IPC: C09K 19/54

Language of the proceedings: EN

Title of invention:

Liquid crystal dispersed polymer electrooptical films having reverse morphology

Applicant:

Sniaricerche S.C.P.A.

Opponent:

-

Headword:

Liquid crystal/SNIARICERCHE

Relevant legal provisions:

EPC Art. 54, 111(1), 123(2)

Keyword:

"Amended set of claims submitted during appeal proceedings supported by the application as filed (yes)"
"Remittal to the first instance for further prosecution"

Decisions cited:

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Catchword:

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Case Number: T 0841/02 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 26 May 2003

Appellant: Sniaricerche S.C.P.A.
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Representative: Forattini, Amelia
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 12 February 2002
refusing European patent application
No. 98 124 536.8 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. J. Nuss
Members: P. P. Ranguis
S. C. Perryman

Summary of Facts and Submissions

- I. The Appellant (Applicant) filed an appeal against the decision of the Examining Division refusing pursuant to Article 97(1) EPC the European patent application No. 98 124 536.8 (Publication number 0 927 753) on the ground that the then pending request lacked novelty or did not involve an inventive step in view of document (5) EP-A-0 747 461.
- II. The then pending request comprised forty claims, independent Claim 1 reading as follows:
- "1. A liquid crystal dispersed polymer electrooptical film comprising a liquid crystal material and a polymer material, wherein the electrooptical film has a reverse morphology, comprises a flexible plastic sheet electrode, and the liquid crystal material has cholesteric properties".
- III. The Examining Division held that all features disclosed in Claims 1, 2, 4, 11, 12, 16 to 21 and 23 had already been described in document (5). Even though the claims were rendered novel, they still would have lacked an inventive step over the disclosure of document (5) since the claimed subject-matter, namely a liquid crystal dispersed polymer electrooptical film in which the electrooptical film had a reverse morphology, had been achieved in document (5) in the same or at least very similar manner.
- IV. As a follow up to the second communication of the Board, the Appellant filed with the letter received on 7 April 2003 as sole request a set of twenty three

claims, Claim 1 (the sole independent claim) reading as follows:

"1. A liquid crystal dispersed polymer electrooptical film comprising a liquid crystal material and a polymer material, wherein the electrooptical film has a reverse morphology, comprises a flexible plastic sheet electrode, and the liquid crystal material has cholesteric properties, wherein the electrooptical film comprises 40 percent or more by weight of polymer material relative to the total weight of liquid crystal material and polymer material".

- V. The Appellant requested that the decision of the Examining Division be set aside and that the case be remitted to the first instance for further prosecution on the basis of the set of twenty three claims filed with letter received on 7 April 2003.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 123(2) EPC - Amendments*
 - 2.1 The subject-matter of Claim 1 derives, firstly, from originally filed Claim 1 in combination with dependent Claims 13 and 21 as originally filed. Secondly, regarding the feature "flexible", it emerges clearly that the substrate upon which the liquid crystal material and the prepolymer material is applied, is in a variant, wound on a roll (cf. Claim 74 as originally filed) and is, therefore, flexible. This substrate cannot be anything but the plastic sheet electrode (cf.

Claim 21 as originally filed). This finding is confirmed by the description as originally filed which mentions on page 35, line 25 that the conductive substrates are flexible.

The subject-matter of Claims 2 to 8 derives respectively from originally filed Claims 2 to 8.

The subject-matter of Claims 9 and 10 derives respectively from originally filed Claims 9 and 10 in combination with the value of PDLc given in the Table of page 26 of the description as originally filed.

The subject-matter of Claims 11 and 12 derives respectively from originally filed Claims 14 and 15.

The subject-matter of Claims 13 to 23 derives respectively from originally filed Claims 16 to 20, 22, 23, 32, 33, 45 and 46.

2.2 The present request meets, therefore, the requirements of Article 123(2) EPC.

3. *Article 54 EPC - Novelty*

3.1 The following documents were cited in the course of the Examination proceedings:

- (1) T. Nakata et al "Polymer morphology and electro-optic properties of PSCT devices" in Proceedings of the 1996 16th International Liquid Crystal Conference, Part 1 (of 5); Kent, USA 24 to 28 June, 1996, Mol. Cryst. Liq. Cryst. 1997, vol. 299, pages 389 to 394, 1997,

- (2) A. Fuh et al "Studies of Polymer-stabilized cholesteric Liquid Crystal Texture Films" Chinese Journal of Physics, vol 33, No. 3, June 1995; pages 291 to 302,
- (3) D. Yang and J. Doane "Cholesteric reflective Display: Drive Scheme and Contrast", Applied Physics Letters, vol. 64, No. 15, 11/4/94, pages 1905-1907,
- (4) US-A-5 674 576,
- (5) EP-A-0 747 461,
- (6) J. West et al: "Polymer-stabilized Cholesteric Texture Materials for Black-on-White Displays" SID Internat. Symposium Digest of Technical Papers, San Jose, 14 to 16 June, 1994, vol. 25, 14/6/94, pages 608 to 610,
- (7) M. Pfeiffer et al: "Design of PSCT Materials for MIM Adressing" SID Internat. Symposium Digest of Technical Papers, San Jose, 14 to 16 June, 1994, vol. 25, 14/6/94, pages 837 to 840,
- (8) WO-A-92/19695,
- (9) GB-A-2 279 659.

3.2 None of the documents cited disclose in combination all the features of Claim 1. Thus, on the one hand, document (5) discloses polymer stabilized liquid crystals and flexible devices thereof wherein the mesogenic polymer discontinuous phase is present in a concentration range of 5 to 30 weight percent (cf.

page 5, lines 14 to 15), distinct from the now defined range. On the other hand, none of the other documents cited disclose explicitly electrooptical films on a flexible substrate.

3.3 The claimed subject-matter of Claim 1 is, therefore, novel. The same is true for the dependent Claims 2 to 23.

4. *Remittal - Article 111(1) EPC*

The decision under appeal addressed the novelty issue as far as then pending claims 1, 2, 4, 11, 12, 16 to 21 and 23 were concerned. Present Claim 1 results, in particular, from the combination of the subject-matter of rejected Claim 1 with dependent Claim 13 as originally filed (which was not objected to by the Examining Division under Article 54 EPC).

In the present case, the filing of a main claim wherein a new feature was introduced which was not considered in the decision under appeal and which might be decisive for the assessment of inventive step raises a fresh case that makes it necessary to consider whether or not to remit the matter to the Examining Division for further prosecution (Article 111(1) EPC).

The Board, in order not to deprive the Appellant of the possibility of being heard by two instances, does not consider it appropriate to deal itself with the issue of inventive step. Accordingly, the case is remitted to the first instance for further prosecution pursuant to Article 111(1) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The matter is remitted to the first instance for further prosecution on the basis of the set of twenty three claims submitted with letter received on 7 April 2003.

The Registrar:

The Chairman:

N. Maslin

A. Nuss