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D E C I S I O N
of 20 October 2003

Case Number: T 0273/03 - 3.2.1

Application Number: 98660022.9

Publication Number: 0867338

IPC: B60Q 7/00

Language of the proceedings: EN

Title of invention:
Warning triangle

Applicant:
OY TALMU AB

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art.

Keyword:
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0273/03 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 20 October 2003

Appellant: OY TALMU AB
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 26 August 2002 refusing European application No. 98660022.9 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: S. Crane
Members: M. Ceyte
H. Preglau

Summary of Facts and Submissions

I. European patent No. 98 660 022.9 (publication No. 0 867 338) was refused by a decision of the Examining Division posted 26 August 2002.

II. The reason given for the decision was that

- the warning triangle according to claim 1 lacks novelty over

  D1: DE-A-29618574

- the warning triangle according to independent claim 11 is not inventive over prior art document D1 and common general knowledge.

III. On 24 October 2002 the appellant (applicant) lodged an appeal against the decision and paid the prescribed appeal fee at the same time.

The statement of grounds of appeal was filed on 16 December 2002.

IV. Following a communication from the Board the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

- Claims 1 to 12 filed with letter dated 3 September 2003.

- Description: pages 1 to 6 filed with letter dated 3 September 2003.

– Drawings: sheet 1/2, as published and sheet 2/2 filed with letter dated 3 September 2003.

Claim 1 (after correction of a clerical error) reads as follows:

"1. A warning triangle comprising a first side (2), a second side (3), a base portion (4) and legs (6, 7, 8, 9), the base portion, the first side and the second side each comprising a night reflection part (12, 13, 14) and a day reflection part (15, 16, 17), the day reflection parts being arranged within the night reflection parts, closer to the middle of the warning triangle (1), when the warning triangle is in its erected position, **c h a r a c t e r i z e d** in that a gap (18) is provided between the reflective front surface of the day reflection part (15) and the rear surface of the night reflection part (12) of the first side (2) when the warning triangle is in its erected and in its folded transport position, the day reflection part (17) of the base portion (4) being arranged to at least partly extend through the gap (18) when the warning triangle is in its folded transport position.

Independent claim 11 reads as follows:

"11. A warning triangle comprising a first side (2), a second side (3), a base portion (4) and legs (6, 7, 8, 9), the base portion, the first side and the second side each comprising a night reflection part (12, 13, 14), a day reflection part (15, 16, 17) being arranged within the night reflection parts (12, 13,

14), closer to the middle of the warning triangle (1), when the warning triangle is in its erected position, **c h a r a c t e r i z e d** in that a gap is provided between the reflective front surface of the day reflection part (17) and the rear surface of the night reflection part (14) of the base portion (4), when the warning triangle is in its erected and in its folded transport position, the day reflection part (15) of the first side (2) being arranged to at least partly extend through the gap, when the warning triangle is in its folded transport position."

Reasons for the Decision

1. The appeal is admissible.

2. *Formal matters*

There are no formal objections under Article 123(2) EPC to the amendments to claims 1 and 11, since they are adequately supported by the original disclosure.

The provision of a permanent gap on the first side of the warning triangle between the reflective front surface of the day reflection part and the rear surface of the night reflection part, even if the warning triangle is in its erected position, is supported by Figure 1 which shows the first side of the erected triangle and indicates such gap and in particular by the passage of the description as filed at page 3, lines 16 to 22, where it is stated that the front surface of the reflection part is slightly located behind the night reflection part of the first side.

The permanent gap claimed in claim 11 is implicitly disclosed in the application as originally filed since it is stated that the gap provided on the first side can also be arranged in an analogous way on the base portion of the warning triangle (page 5, penultimate paragraph of the application as filed).

3. *Novelty*

Claim 1 as amended states in its characterising part that there is a gap arranged on the first side on the warning triangle when the latter is in its erected position.

Figure 1 of prior art document D1 is a front elevation of a warning triangle shown in its fully erected position. Figure 3 is a section of the first side of the warning triangle along the line III-III in Figure 1. As can be seen from Figure 3, no gap is provided between the reflective front surface of the day reflection part and the rear surface of the night reflection part of the first side when the warning triangle is in its erected portion.

Therefore, the warning triangle according to claim 1 is novel over this state of the art.

Figure 4 of prior art document D1 is a section of the base portion along the line IV-IV in Figure 1 which shows the warning triangle in its fully erected position.

As can be seen from this Figure 4, no gap is present between the reflective front surface of the day reflection part and the rear surface of the night reflection part of the base portion, when the warning triangle is in its erected position.

Therefore, the subject-matter of independent claim 11 is novel over this state of the art.

4. *Inventive step*

4.1 Figure 2 of D1 is a view of the warning triangle in its folded position for transport or compact storage. It is true that this figure shows a gap between the reflective front surface of the day reflection part and the rear surface of the night reflection part of the first side. However, the description of this citation is wholly silent as to the existence of such gap.

According to the disclosure from Figure 2, the laterally disposed day reflection part (8) of the first side is at its junction with the night reflection part (5) folded along two folding lines, so that the night reflection part (5) extends in front of the associated day reflection part (8) and the day reflection part (7) extends through the gap defined by these two associated members (5, 8).

Thus it will be seen from Figure 2 that it is necessary to fold the laterally disposed day reflection part (8) along two folding lines before swivelling the side parts into their folded position adjacent to the base part. It is clear that this preliminary folding complicates the folding of the warning triangle into

its transport or storage position and increases the risk of damaging the day reflection members (7) and/or (8).

4.2 Starting from D1 the problem to be solved by the present invention may be seen in providing a warning triangle with day reflection parts which is easy to fold in its transport or storage position without the risk of damaging the day reflection parts.

This problem is solved by the features stated in the characterising part of claims 1 or 11.

There is no disclosure or suggestion in D1 or in the other prior art documents cited in the search report of the claimed permanent or preformed gap provided between the reflective front surface of the day reflection member and the rear surface of the night reflection member of the first side, the day reflection member of the first side forming a guiding means for the day reflection member of the base portion when the latter is moved into the gap or withdrawn from it, thereby rendering the warning triangle easy to erect or to fold for compact storage.

4.3 Accordingly, in the Board's judgment, the subject-matter of claim 1 cannot be derived in an obvious manner from the available prior art and consequently involves an inventive step (Article 56 EPC).

5. The same applies to the subject-matter of independent claim 11 in which the permanent gap is provided on the base portion of the warning triangle. The subject-

matter of independent claim 11 therefore also involves an inventive step (Article 56 EPC).

Dependent claims 2 to 10 and 12 concern particular embodiments of the invention claimed in claim 1 and in claim 11 respectively and are likewise allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant a patent on the basis of the documents indicated in point IV above.

The Registrar: The Chairman:

S. Fabiani S. Crane