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**Datasheet for the decision
of 14 January 2008**

Case Number: T 0044/07 - 3.2.05

Application Number: 00830034.5

Publication Number: 1106385

IPC: B42F 5/00

Language of the proceedings: EN

Title of invention:
Plastic coated stamp card

Applicant:
Poste Italiane S.p.A.

Headword:
-

Relevant legal provisions:
EPC Art. 113(1), 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Extension beyond the application as filed - yes"

Decisions cited:
G 0003/89

Catchword:
-



Case Number: T 0044/07 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 14 January 2008

Appellant: Poste Italiane S.p.A.
(Applicant): Viale Europa 190
I-00144 Roma (IT)

Representative:

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 12 June 2006
refusing European application No. 00830034.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. Zellhuber
Members: H. Schram
C. Rennie-Smith

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division posted 12 June 2006 refusing European patent application No. 00 830 034.5 (publication No. 1 106 385) on the ground that the subject-matter of claim 1 of the application as filed, i.e. claim 1 of the sole request of the appellant (applicant), did not involve an inventive step (Article 56 EPC).

- II. In the Statement of Grounds of Appeal filed on 28 October 2006 the appellant submitted that, due to the fact that the Communication of the Examining Division dated 6 April 2005 was not delivered to the appellant by registered letter, it had been deprived of the full four months for filing observations in reply to said Communication. The appellant further submitted that the arguments supplied with its letter of 5 August 2005 "*have not been positively or logically considered*" in the decision under appeal (see Statement of Grounds of Appeal, page 3, second paragraph). These were serious procedural defects and constituted a breach of Article 113(1) EPC.

- III. In a communication dated 14 March 2007 the Board expressed its provisional opinion that, whilst it accepted the position of the appellant that the Communication dated 6 April 2005, viz. the invitation to file observations pursuant to Article 96(2) EPC, was not delivered to it by registered letter (Rule 78(2) EPC 1973), it appeared that the appellant did not fail to reply in due time to said Communication. It also appeared that the Examining Division addressed what it perceived as the essential arguments of the appellant in points 3 and 4 of the reasons for the decision under appeal. The

Board added that, even if it would find that the Examining Division erred, such an error could not be considered a substantial procedural violation in the sense that correct application of the EPC would not have led to a different outcome (cf. Rule 67 EPC 1973).

- IV. The appellant requested in further written submission dated 23 July 2007 that the decision under appeal be set aside and that the case be remitted to the Examining Division or a patent be granted on the basis of the documents filed on 23 July 2007.

- V. In a second communication dated 28 August 2007 annexed to the summons to attend oral proceedings scheduled for 14 January 2008 the Board expressed its provisional opinion that the subject-matter of claim 1 of the sole request of the appellant did not seem to meet the requirements of Article 123(2) EPC (see point 5 of said communication).

- VI. In reply to the summons the appellant informed the Board on 10 January 2008 that "we shall not be present at the oral proceedings".

- VII. Oral proceedings were held before the Board of Appeal on 14 January 2008. As announced, no one was present for the appellant.

- VIII. Claim 1 according to the sole request of the appellant filed on 23 July 2007 reads as follows:

"1. Plastic coated stamp card containing - in a vacuum sealed inter-space - one or more stamps for collecting

and with advertising and postal information,
characterized by:

- Entirely plasticized and vacuum-sealed structure consisting of a sole thin card with images and information (the plasticization is extended to the whole surface):
- Plasticization is extended to the whole surface of the card: the mechanic double plasticization process is innovative and it grants that the area where the stamp is located creates a vacuum-sealed inter-space that protects the stamp by atmospheric agents, humidity, rust, etc. until the stamp itself is taken away;
- Protection of the stamp mint is granted in its top entirety thanks to the vacuum sealed inter-space;
- Possibility to take out / reinsert the stamp: to take the stamp out it is necessary to broke the stamp card. Once the stamp is taken out it could never be reinserted in the card at the same condition and the vacuum sealed inter-space - as well as the card itself - ended their protection function to which they were destined."

Reasons for the Decision

1. *Procedural matters*

In the Notice of Appeal filed on 21 August 2006 the appellant requested that a European patent be granted. In the Statement of Grounds of Appeal filed on 28 October 2006 the appellant requested the Board either to remit the case to the Examining Division for further

prosecution, or to grant the European patent. The final request of the appellant is reiterated in point IV above.

Whilst the appellant has submitted that the examining proceedings were tainted by several substantial procedural violations (*inter alia*: a defect in notification resulting in a violation of Article 113(1) EPC; amendments introduced by the appellant were not evaluated in breach of Article 113(1) EPC; the decision under appeal was not reasoned, cf. Rule 68(2) EPC 1973), a formal request to decide on this issue is not on file.

As regards the provisions of Article 113(1) EPC, in the Board's judgement no fundamental deficiencies are apparent in the first instance proceedings, which would justify a remittal of the case to the first instance.

The appellant was given an opportunity to present its comments in the course of the examination proceedings (see the Communication dated 6 April 2005 of the Examining Division), and in fact filed observations in reply to said Communication on Friday, 5 August 2005, i.e. within the time limit for answering said Communication which expired on Tuesday, 16 August 2005 (Rule 78(2) EPC 1973). Despite the fact that in the covering letter accompanying said reply it was stated: "... , we file a short preliminary note to correct the deficiencies pointed out in the Communication", the appellant did not file further observations and/or amendments in the months following filing said reply. The decision to refuse the application, which was posted 8 months after the date said reply was filed, was thus not issued precipitously by the Examining Division.

As regards the substantiation of the decision under appeal, no fundamental deficiencies are apparent in the first instance proceedings either, as pointed out in point 9 of the communication of the Board dated 14 March 2007 and summarized in point III. above.

2. *Extension beyond the content of the application as filed, Article 123(2) EPC*

2.1 The term "content of the application as filed" used in Article 123(2) EPC relates to the parts of a European patent application which determine the disclosure of the invention, namely the description, claims and drawings, see G 3/89 (Correction under Rule 88, second sentence, EPC 1973; OJ EPO 1993, 117), point 1.4 of the Reasons.

In the present case the "content of application as filed" is (see published version), apart from the drawings (Figures 1 and 2), the following:

"Description

[0001] The plastic coated stamp card is a new way to introduce the stamp for collecting, compared with the usual stamps marketing methods.

[0002] The new model consists of a plastic coated card, serving also as an advertising means and as a source of postal information, in which are located, with the possibility of being taken out, one or more stamps for collecting inserted in its/their bag - Figure 1 (a) placed with or adhered to the card.

[0003] This utility model, as by the enclosed picture, presents two sides (Figure 1 and Figure 2) hereby described:

Figure 1: Side A -stamp for collecting inserted in a plastic bag - Fig. 1 (a); Information about the type and the kind of the stamp inserted in - Fig.1 (b); Italian Posts logo and Filatelia mark.- Figure 1 (c).

Figure 2: Side B - Italian Posts logo and Filatelia mark - Fig. 2 (a); Philatelic information - Fig. 2 (b) with pertinent illustrations - Fig. 2 (c).

Claims

1. We claim the utility model as described and illustrated hereby, marked by one or more bags - containing one or more stamps - inserted in the plastic coated card or self-adhesive."

2.2 Claim 1 of the sole request of the appellant contains *inter alia* the feature "vacuum sealed inter-space". This feature is not disclosed in the application documents as filed.

Hence already for that reason claim 1 of said request extends beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Meyfarth

W. Zellhuber