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**Datasheet for the decision
of 21 January 2009**

Case Number: T 0052/08 - 3.3.06

Application Number: 02765768.3

Publication Number: 1412432

IPC: C09C 1/00

Language of the proceedings: EN

Title of invention:

Multi-layered magnetic pigments and foils

Applicant:

JDS Uniphase Corporation

Opponent:

-

Headword:

Multi-layered magnetic pigments/JDS

Relevant legal provisions:

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

Relevant legal provisions (EPC 1973):

-

Keyword:

"Novelty (yes)"
"Remittal (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0052/08 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 21 January 2009

Appellant: JDS Uniphase Corporation
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 August 2007
refusing European application No. 02765768.3
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
A. Pignatelli

Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application no. 02 765 768.3, relating to magnetic pigment flakes.
- II. In its decision, the Examining Division, referring to document (2): DE-A-4104310, found *inter alia* that the magnetisable iron flakes coated with colourless oxides disclosed in this document detract from the novelty of claim 1.
- III. An appeal was filed against this decision by the Applicant (Appellant).

With the letter of 2 September 2008 the Appellant submitted an amended set of 19 claims. Newly amended claims 10 to 19 were subsequently submitted with a fax dated 12 January 2009.

Claim 1 of this set of claims reads as follows:

"1. A magnetic pigment flake, consisting of: a central magnetic layer having a first major surface, an opposing second major surface, and at least one side surface; a first reflector layer on the first major surface of the magnetic layer, the first reflector layer for reflecting light; and a second reflector layer on the second major surface of the magnetic layer, the second reflector layer for reflecting light; wherein each of the first and second reflector layer is composed of at least one of a metal, a metal alloy, or a combination thereof; wherein the first and second reflector layers are on each of the first and second

major surfaces but not on the at least one side surface of the magnetic layer; and wherein the pigment flake exhibits a reflectivity corresponding to the reflectivity of the reflector layers and exhibits magnetic characteristics based on the relative magnetism of the magnetic layer."

Dependent claims 2 to 12 and 15 relate to particular embodiments of the claimed magnetic pigment flake of claim 1.

Independent claims 13, 16 and 18 read respectively as follows:

"13. A magnetic colorant composition, comprising: a pigment medium; and a plurality of pigment flakes dispersed in the pigment medium, the pigment flakes having a multilayer structure the same as the pigment flake defined in claim 1."

"16. A pigment flake comprising a magnetic core section consisting of the magnetic pigment flake of claim 1, and a dielectric layer substantially surrounding the magnetic core section."

"18. A magnetic colorant pigment composition, comprising: a pigment medium; and a plurality of pigment flakes dispersed in the pigment medium, the pigment flakes having a multilayer structure the same as the pigment flake defined in claim 16."

Dependent claims 14, 17 and 19 relate to particular embodiments of the subject-matters of claims 13, 16 and 18, respectively.

IV. The Board cited in the communication under Rule 100(2) EPC of 3 July 2008 the following additional documents:

(5): EP-A-421207 and

(6): DE-A-4205634.

V. The Appellant submitted in writing *inter alia* that

- the amended claims comply with the requirements of Article 123(2) EPC;

- the pigment flakes disclosed in document (2) do not contain any reflector layer for reflecting light as required in claim 1 but layers of colourless oxides which are known to have anti-reflective properties as indicated, for example, in documents (3): US-A-4265991 and (4): US-A-4231808;

- moreover, the pigment flakes of document (2) do not comprise reflector layers composed of at least one of a metal, a metal alloy, or a combination thereof and are structurally different from the pigment flakes claimed, wherein reflector layers are present on each of the first and second major surfaces of the central magnetic layer but not on the at least one side surface of such a magnetic layer;

- documents (5) and (6) disclose magnetic pigments which do not comprise reflector layers composed of at least one of a metal, a metal alloy, or a combination thereof and are structurally different from the pigment flakes claimed, wherein reflector layers are present on each of the first and second major surfaces of the

central magnetic layer but not on the at least one side surface of such a magnetic layer;

- therefore, the claimed subject-matter is novel over the cited prior art.

VI. The Appellant requests that the decision under appeal be set aside and that the case be remitted to the Examining Division for further prosecution.

Reasons for the Decision

1. *Article 123(2) EPC*

The Board is satisfied that claims 1 to 19 comply with the requirements of Article 123(2) EPC.

In fact, claim 1 finds support on claims 1 and 2 of the original documents of the application read in combination with page 12, lines 25 to 27; claims 2 to 11 are supported by original claims 10 to 19, respectively; claim 12 is supported by the passage from page 12, line 31 to page 13, line 1 of the original description; claims 13 and 14 are supported by original claims 21 and 22, respectively; claim 15 finds support in the passage from page 11, line 31 to page 12, line 1 of the original description read in combination with the passage on page 12, lines 17 to 19; claims 16 and 17 are supported by original claims 5 and 6, respectively; claim 18 is supported by the passage on page 13, lines 2 to 6 of the original description read in combination with the passage on page 28, lines 30 to

32 and claim 19 is supported by the passages on page 28, lines 29 to 31 and page 29, lines 4 to 8.

2. *Novelty*

- 2.1 Document (2) discloses a pigment flake consisting of a central stainless steel layer, which is a magnetic layer, coated with iron(III) oxide layers (see example 1, claims 1 and 2). Layers of colourless oxides can be present only optionally on the iron(III) oxide layers (see claim 5; example 2 and column 2, line 62 to column 3, line 6).

The Board notes that most materials are able to absorb light of specific wavelengths and of reflecting light of other wavelengths and, in a layered product, these properties depend, for example, on the specific light source, on the angle of incidence of light and on the position of a layer with respect to the other layers, which also absorb and reflect light.

Therefore, also the iron(III) oxide layers of document (2) would be able to reflect light of specific wavelengths and have to be considered to be reflector layers for reflecting light as required in claim 1.

However, these reflector layers of document (2) do not consist of a metal or a metal alloy as required in claim 1.

Therefore, this disclosure does not detract from the novelty of the subject-matter of claim 1.

2.2 Magnetic pigments consisting of a magnetic layer coated with a material having reflecting properties are known from documents (5) (page 3, lines 16 to 22; examples; claim 1) and (6) (page 2, lines 21 to 61; examples, claims 1, 2 and 4).

However, the reflector layers of these magnetic pigments surround the magnetic layer.

Therefore, the products disclosed in these documents do not comply with the requirement of claim 1 that the first and second reflector layers are on each of the first and second major surfaces of the central magnetic layer but not on the at least one side surface of said magnetic layer.

Therefore, also these disclosures do not detract from the novelty of claim 1.

2.3 The Board concludes that the subject-matter of claim 1 is novel over the cited prior art.

Since the subject-matter of independent claim 13 relates to a composition comprising the pigment flakes of claim 1, this claim and all claims depending on claims 1 and 13 are also novel over the cited prior art.

2.4 Independent claim 16 relates to a pigment flake which has a dielectric layer which substantially surrounds the magnetic core section corresponding to the pigment flake of claim 1 (see point III above).

Since, as explained hereinabove, a pigment flake according to claim 1 is not disclosed in any of the

cited documents, the cited prior does not disclose a product having a magnetic core section as required in claim 16.

Therefore, the subject-matter of claim 16 is novel over the cited prior art.

2.5 Since the subject-matter of independent claim 18 relates to a composition comprising the pigment flakes of claim 16, this claim and the dependent claims 17 and 19 are also novel over the cited prior art.

3. *Remittal*

In the present case the decision under appeal was based on the ground of lack of novelty only.

Therefore, it has still to be assessed whether the claims satisfy the other requirements of the EPC, for example, whether an inventive step is involved.

The Board thus finds that in order not to deprive the Appellant of the opportunity to argue the remaining issues at two instances, as explicitly requested by the Appellant in the statement of the grounds of appeal (page 1, 4th full paragraph) and with the fax of 12 January 2009 (point 2.1), it is appropriate in the present case to make use of its powers under Article 111(1) EPC 1973 to remit the case to the Examining Division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:

G. Rauh

P.-P. Bracke