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**Datasheet for the decision
of 23 July 2009**

Case Number: T 2142/08 - 3.2.04

Application Number: 03748801.2

Publication Number: 1549168

IPC: A45C 11/18

Language of the proceedings: EN

Title of invention:

Device for storing and protecting a data carrier

Applicant:

Persson, Claes

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 54(1)

Keyword:

"Main request - novelty (yes) - inventive step (no)"

"Auxiliary request - added subject-matter (yes)"

Decisions cited:

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Catchword:

-

Case Number: T 2142/08 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 23 July 2009

Appellant: Persson, Claes
(Applicant:) Parkveien 41b
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Representative: Johansson Webjörn, Ingmari
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 May 2008
refusing European patent application
No. 03748801.2 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. Scheibling
Members: A. de Vries
C. Heath

Summary of Facts and Submissions

- I. This appeal is against the decision of the Examining Division dated 30 May 2008 to refuse the patent application. The Examining Division considered that the subject-matter of claim 1 did not comply with the requirements of novelty of Article 54(1) EPC 1973 with respect to D3: US-A-4 647 714.

The Appellant's notice of appeal was received on 25 July 2008 and the appeal fee was paid simultaneously.

The statement setting out the grounds of appeal was received on 26 September 2008.

- II. By letter dated 16 June 2009 the Appellant withdrew his request for oral proceedings.

Oral proceedings took place on 23 July 2009 before the Board of Appeal. Although duly summoned the Appellant had not appeared.

In accordance with the provisions of Rule 115(2) EPC the proceedings were continued without him.

- III. Claim 1 of the main request reads as follows:

"1. A device for storing and protecting a credit card or bank card comprising a data-carrying element including a magnetic strip and/or a chip from inadvertent erasure of data, in the form of a holder (1) comprising shielding metal sheets (2, 3) so arranged that they envelop the data-carrying element,

the metal sheets of the holder (1) being produced from one uniform piece of sheet material that is bent along a single fold characterised in that the holder (1) has the form of planar and parallel sheet portions (2, 3, 4, 5) connected via the fold only and at a distance that corresponds approximately to the thickness of the card to be protected, and wherein the first sheet portion (2) in terms of area is dimensioned so that it essentially completely overlaps the whole surface area of the card, the second sheet portion having a rectangular (3) or a recessed rectangular (4, 5) shape dimensioned with a reduced width, so that it only extends some distance from the fold and exposes a surface area extending over the full length of the card but completely overlaps the data-carrying when the card has been fully inserted into the holder (1)."

Claim 1 of the auxiliary request reads as follows:

"1. A device for storing and protecting a credit card or bank card comprising a data-carrying element including a magnetic strip and/or a chip from inadvertent erasure of data, in the form of a holder (1) comprising shielding metal sheets (2, 3) so arranged that they envelop the data-carrying element, the metal sheets of the holder (1) being produced from one uniform piece of sheet material that is bent along a single fold characterised in that the holder (1) has the form of planar and parallel sheet portions (2, 3, 4, 5) connected via the fold only, for allowing removal of the card from any of the resulting non-connected edges of the sheet portions (2, 3, 4, 5) and at a distance that corresponds approximately to the thickness of the card to be protected, and wherein the

first sheet portion (2) in terms of area is dimensioned so that it essentially completely overlaps the whole surface area of the card, the second sheet portion having a rectangular (3) or a recessed rectangular (4, 5) shape dimensioned with a reduced width, so that it only extends some distance from the fold and exposes a surface area extending over the full length of the card but completely overlaps the data-carrying when the card has been fully inserted into the holder (1)."

- IV. The Appellant requested in writing that the decision under appeal be set aside and a patent be granted on the basis of the claims according to the main request filed with the grounds of appeal or to the auxiliary request filed with letter dated 12 May 2009.

He mainly argued as follows:

D3 discloses a device in the form of a holder for storing and protecting two cards (a top and a bottom card) between two shielding metal sheets. However, the upper sheet portion of this holder does not extend (only) some distance but a substantial distance from the fold. Moreover the first lower sheet portion cannot essentially completely overlap the whole surface of the card, since otherwise it would be difficult to remove the bottom card as it would be concealed between the top card and the lower sheet portion. Thus, the device of the invention gives superior accessibility of the card. Furthermore the invention resulted in a commercial success which is indicative of the presence of inventive step.

The feature added to claim 1 of the auxiliary request is immediately evident, since there is only one fold/connection and the sheets are parallel, planar and at a distance corresponding approximately to the thickness of the card to be protected.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request:*
 - 2.1 Novelty:
 - 2.1.1 D3 (column 12, lines 1, 2 and 27 to 39; Figure 18) discloses a device for storing and protecting credit cards or bank cards comprising a data-carrying element including a magnetic strip from inadvertent erasure of data, in the form of a holder comprising shielding metal sheets (54) so arranged that they envelop the data-carrying element, the metal sheets of the holder being produced from one uniform piece of sheet material that is bent along a single fold, wherein the holder has the form of planar and parallel sheet portions (72, 74) connected via the fold only and at a distance that corresponds approximately to the thickness of the two cards to be protected and the dividing sheet, and wherein the first sheet portion (72) in terms of area is dimensioned so that it essentially completely overlaps the whole surface area of the cards, the second sheet portion having a rectangular shape dimensioned with a reduced width, so that it only extends some distance from the fold and exposes a

surface area extending over the full length of the cards but completely overlaps the data-carrying when the card has been fully inserted into the holder.

2.1.2 The device according to claim 1 of the main request differs from that of D3 in that the distance between the two sheet portions corresponds to the thickness of one card.

2.1.3 Thus, novelty is given with respect to D3.

2.1.4 The Appellant argued that in addition to the above mentioned distinguishing feature, D3 also fails to disclose that:

(a) "the first sheet portion ... essentially completely overlaps the whole surface of the card".

(b) "the second sheet portion has a rectangular shape dimensioned with a reduced width, so that it extends some distance from the fold and exposes a surface area extending over the full length of the card ..."

(c) "the holder has the form of planar and parallel sheet portions connected via the fold only".

The Board does not concur with the Appellant's arguments for the following reasons:

In the position shown in Figure 18 of D3 the card 68 is not fully inserted into the holder. However, the dotted line featuring the end the card is at a distance from the fold of the holder comparable to the distance the

card protrudes from the holder. Moreover, the claim only requires that the holder "essentially completely overlaps ... the card" which weakens the term "completely" and renders the whole rather vague.

The argument that the first lower sheet portion cannot essentially completely overlap the whole surface of the card, since otherwise it would be difficult to remove the bottom card as it would be concealed between the top card and the lower sheet portion is not convincing. As is apparent from Figure 18, the dividing sheet between the two cards is provided with a recess to facilitate removal of the bottom card, accordingly the bottom card may be easily removed from the holder even if the lower sheet portion completely overlaps the whole surface of the bottom card.

Figure 18 of D3 clearly shows that the width of the second sheet portion is smaller than that of the first one. The Appellant argued that claim 1 requires that the second sheet portion extends "some distance" from the fold, whereas in D3 it extends "a substantial distance" from the fold. However, "some distance" is a rather vague requirement and thus already fulfilled when the width of the sheet portion is such that a part of the surface area of the card remains exposed when the card is fully inserted in the holder.

The Appellant considered that feature c) implies an open-ended configuration of the device. However, claim 1 solely requires that the metal sheet of the holder is bent along a single fold so as to form two sheet portions which are connected via the fold only. This does not imply that the device has an open-ended

configuration, all the more because claim 2 as filed provides for a covering layer that may be applied to the metal sheet portions, in which case the application as filed does not exclude that this covering layer may seal the lateral ends of the holder. Such a configuration is possible, as demonstrated for example by Figure 18 of D3, where the metal sheets come into contact with each other, i.e. are connected to each other via the fold only, although the lateral ends of the holder are sealed by the covering layer

2.2 Inventive step:

Thus the device according to claim 1 of the main request differs from that of D3 in that the distance between the two sheet portions corresponds to the thickness of the one and sole card to be protected.

The holder described in D3 is designed to accommodate two cards. The problem to be solved by the invention with respect to D3 might therefore be seen in providing a holder for one card only.

It is however obvious for a skilled person that if only one card is to be stored in the holder, the distance between the sheet portions has to be adapted to the thickness of the card to be protected, so that the card does not fall out of the holder.

The Appellant argued that the commercial success of the claimed holder is indicative of the presence of inventive step.

Although in certain circumstances it may be indicative of the presence of inventive step, commercial success alone cannot provide inventiveness to an otherwise obvious subject-matter.

Accordingly, the subject-matter of claim 1 of the main request does not involve an inventive step and the main request must fail.

3. *Auxiliary request:*

3.1 Amendments:

Claim 1 of the auxiliary request has been amended with respect to claim 1 of the main request by further specifying that the parallel sheet portions allow removal of the card from any of the resulting non-connected edges of the sheet portions.

However, neither the description nor the claims as filed explicitly disclose this feature. This feature is not implicit either, since Figure 18 of D3 shows that even if the two sheet portions of the holder are connected via the fold only, a coating layer may still preclude removal of the card from the non-connected edges of the sheet portions.

Thus only the Figures of the application as filed could possibly support this amendment. In the present case, these Figures, which are schematic drawings, show a holder with open ended lateral edges. However, according to claim 2 as filed, the holder may be provided with a coating layer, in which case it is unclear whether or not the lateral edges of the holder

would remain open. It is further unclear whether the Figures show a holder with or without a coating layer. Thus it cannot be inferred from the Figures whether lateral removal of the card would still be possible in the case where a coating layer has been applied to the holder. In other words the simple fact that something is not shown in the Figures (here sealed lateral edges) does not form a basis for stating that this possibility is formally excluded by these Figures, especially when such a conclusion might contradict other parts of the disclosure (claim 2). Accordingly, the above mentioned amendment cannot be directly and unambiguously derived from the Figures, either.

Thus, claim 1 of the auxiliary request does not meet the requirements of Article 123(2) EPC. Consequently, this request must fail too.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Wolinski

C. Scheibling