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**Datasheet for the decision
of 28 January 2011**

Case Number: T 0010/09 - 3.5.05

Application Number: 02754157.2

Publication Number: 1471411

IPC: G06F 3/033

Language of the proceedings: EN

Title of invention:

An electronic whiteboard having flexibility membrane
electromagnet induction generating device

Applicant:

Taiguen Technology (Shen_zhen) Co., Ltd.

Headword:

More than one layers of induction antenna cells/TAIGUEN

Relevant legal provisions:

EPC Art. 106, 107, 108, 113(1), 113(2), 114(1), 123(2)
RPBA Art. 15(3)

Keyword:

"Direct and unambiguous disclosure - sole request (no)"

Decisions cited:

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Catchword:

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Case Number: T 0010/09 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 28 January 2011

Appellant: Taiguen Technology (Shen_zhen) Co., Ltd.
23, The third Industrial Park of Xia Village
Gongming Baoan District
Shenzen City 518 106 (CN)

Representative: Müller-Boré & Partner
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Grafinger Straße 2
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 18 July 2008
refusing European application No. 02754157.2
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. Ritzka
Members: M. Höhn
F. Blumer

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, dispatched 28 July 2008, refusing European patent application No. 02754157.2 because of lack of inventive step (Articles 52(1) EPC and 56 EPC) having regard to the disclosure of, *inter alia*,

D1: EP 0 347 725 A2 and

D2: US 5 218 174 A1.

II. The notice of appeal was received on 27 August 2008. The appeal fee was paid on the following day. The statement setting out the grounds of appeal was received on 17 November 2008. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of claims 1 to 11 according to the main request or on the basis of claims 1 to 7 according to the auxiliary request, both submitted with the statement setting out the grounds of appeal. Oral proceedings were requested on an auxiliary basis.

III. A summons to oral proceedings to be held on 28 January 2011 was issued on 15 November 2010. In an annex accompanying the summons the board expressed the preliminary opinion that the claimed subject-matter of both requests appeared not to involve an inventive step in the light of the disclosures of D1, D2 and

D6: WO00/33244 A2,

and that the subject-matter of claim 1 of the auxiliary request in addition did not fulfil the requirements of Articles 123(2) and 84 EPC.

Prior art publication D6 was introduced into the proceedings on the board's own motion in accordance with Article 114(1) EPC. The board gave its reasons for the objections and stated that the appellant's arguments were not convincing.

IV. By letter received on 27 December 2010 the appellant filed a new request comprising claims 1 to 7 which replaced the previously filed requests. The appellant indicated passages on which the amendments were said to be based and submitted arguments in favour of the clarity, novelty and inventive step of these claims, and informed the board that neither the applicant nor the representative would attend the oral proceedings.

V. Independent claim 1 according to the sole request reads as follows:

"1. An electronic whiteboard having flexible membrane electromagnetic induction generating device, including an electronic whiteboard main unit having a writing layer as surface, a bottom support bracket layer as bottom, an input induction section (2), a recognition controlling circuit, a signal output device inside between said writing layer and said bottom support bracket layer and a frame (1) around, and also including an input pen, wherein said induction section (2) is composed of a covering layer (6), an electromagnetic induction generating layer (4) and a bottom support bracket layer (7),

characterized in that the base layer of the electromagnetic induction generating layer (4) is an insulated flexible membrane (43), each side of the membrane surfaces has more than one layers of induction antenna cells along X axis and Y axis, said more than one layers of induction antenna cells are insulated from each other forming an electromagnetic induction receiving antenna array (41, 42), and the intervals between the induction antenna cells within one layer are different from that of other layers, the output of said electromagnetic induction generating layer (4) is connected to the recognition controlling circuit, and the input pen has a radio signal receiving device for emitting an electromagnetic signal, which induces a signal in the antenna array, and said recognition controlling circuit (5) is set on a printed circuit board, and the antenna's output port of said flexible membrane electromagnetic induction generating layer (4) is spliced or plugged or welded to the corresponding input pin on the printed circuit board."

- VI. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the sole request (claims 1-7) as filed with letter dated 27 December 2010.

- VII. Oral proceedings were held on 28 January 2011 in the absence of the appellant. After due deliberation on the basis of the written submissions in the statement setting out the grounds of appeal, in the letter dated 27 December 2010 and the request, the board announced its decision.

Reasons for the Decision

1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC (see Facts and Submissions, point II above). Therefore the appeal is admissible.

2. *Non-attendance at oral proceedings*

In its letter dated 27 December 2010 the appellant announced that it would not be represented at the oral proceedings. The board considered it expedient to maintain the date set for oral proceedings. Nobody attended the hearing on behalf of the appellant.

Article 15(3) RPBA stipulates that the board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

In the present case, the board was in a position to announce a decision at the conclusion of the oral proceedings as foreseen by Article 15(6) RPBA.

3. *Article 123(2) EPC*

- 3.1 Claim 1 specifies in the characterizing portion that "... the input pen has a radio signal receiving device ..." (emphasis added). However, only an active input pen which comprises an electromagnetic wave generating device is disclosed in the description of the application (see page 2, lines 2 to 7 and page 3,

lines 20 to 22). The application documents as originally filed do not provide any direct and unambiguous basis for a radio receiving device as part of the input pen.

Since the appellant did not attend the oral proceedings, the board was not in a position to discuss this issue with the appellant, in particular whether this amendment might only be due to an error, because it is not consistent with the appellant's arguments concerning an active input pen (see e.g. point V.1 on page 5 of the statement setting out the grounds of appeal). However, according to Article 113(2) EPC the board shall decide upon the application only in text submitted to it, or agreed, by the applicant, i.e. appellant.

- 3.2 Claim 1 further specifies in the characterizing portion that "... the intervals between the induction antenna cells within one layer are different from that of other layers ...". The appellant argued that this amendment was based on the originally filed claims 4 to 7 as well as page 2, lines 16 to 20 and page 4, lines 2 to 4 of the description as originally filed which had to be interpreted in the sense that in case more than one layer of induction antenna cells are printed on each of the sides of the membrane, the intervals between the antenna cells within one layer may be different from that of the other layers (see page 3 of the letter dated 27 December 2010). However, the board considers that none of the passages disclose that the intervals of the induction antenna cells between each layer are different. As noted in point 5 of the summons for oral proceedings the application as filed only provides a

basis for that "the intervals between the induction antenna cells of each layer are different" (see page 2, lines 16 to 20 and page 4, lines 2 to 4 and original claim 7). This disclosure defines that within each layer the intervals between the induction antenna cells may be different.

Since there is no direct and unambiguous disclosure for such a feature in the application as originally filed, the board does not agree with the appellant's interpretation of these passages of the description as filed which is presented on page 3 of the letter dated 27 December 2010.

- 3.3 In view of the lack of a basis in the application as originally filed for the claim features discussed in 3.1 and 3.2 above, the application does not comply with the requirements of Article 123(2) EPC.

In the communication annexed to the summons to oral proceedings, the appellant was advised that any amendments to its case would have to be examined for compliance with the requirements of the EPC, including *inter alia* Article 123(2) EPC. In the board's judgement, the present decision may be based on this ground (Article 113 EPC) because the appellant was forewarned and could therefore have foreseen that any new request might be subject to an objection in this regard. By not attending the proceedings the appellant effectively chose not to avail of the opportunity to present comments orally before the board but instead to rely on its written case (cf. Article 15(3) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:

K. Götz

A. Ritzka