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**Datasheet for the decision
of 4 March 2014**

Case Number: T 0001/10 - 3.5.04

Application Number: 04755282.3

Publication Number: 1645121

IPC: H04N5/78, G06K3/00

Language of the proceedings: EN

Title of invention:

APPARATUS FOR RECORDING DATA ON MOTION PICTURE FILM

Applicant:

Thomson Licensing

Headword:

Relevant legal provisions:

EPC 1973 Art. 54(1)

Keyword:

Novelty - (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0001/10 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 4 March 2014

Appellant: Thomson Licensing
(Applicant) 1-5, rue Jeanne d'Arc
92130 Issy-les-Moulineaux (FR)

Representative: Heuer, Wilhelm
Heuer Patentanwälte
Jägerberg 6
82335 Berg (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 31 July 2009
refusing European patent application
No. 04755282.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
C. Vallet

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 04 755 282.3 under Article 97(2) of the European Patent Convention (EPC).
- II. The application was refused on the ground that the cartridge according to claim 1 as filed with letter of 16 November 2006 was not new (Article 54(1) EPC) with respect to the cartridge disclosed in

D3: EP 1 186 943 A2.

- III. Claim 1 reads as follows:

"A cartridge comprising a medium having data stored thereon, the medium comprising: a film; wherein portions of the film represent different optical density values representing the data; and wherein each level of optical density is associated with a symbol from a constellation of symbols, and wherein each symbol represents a plurality of bits of data."

- IV. The reasons for the decision may be summarised as follows:

D3 related to the Advanced Photographic System (APS) which uses films contained in cartridges. The film (see D3, figure 2, reference sign 70) had calibration data stored thereon (reference calibration patches 82 arranged in reference calibration array 76 and representing different sensitometric values, see paragraph [0020]). The calibration patches corresponded to the portions of the film specified in claim 1.

The last feature in claim 1, i.e. that each level of optical density was associated with a symbol from a constellation of symbols, and wherein each symbol represented a plurality of bits of data, specified the meaning attached to the optical density values. This meaning could not distinguish the claimed cartridge from that of D3. Moreover, also in D3 the meaning attached to the calibration patches could be considered to be associated with a plurality of data, since each calibration patch 82 represented a unique latent exposure level. Furthermore, the calibration patches were associated with correction factors, see claim 16 of D3.

V. The applicant appealed and requested that the decision be set aside in its entirety. With the statement of grounds of appeal, the appellant filed claim 1 according to an auxiliary request. The appellant requested that a patent be granted on the basis of the claims filed with letter of 16 November 2006 as a main request or on the basis of the auxiliary request.

VI. Claim 1 according to the auxiliary request reads as follows:

"A cartridge comprising a medium having *digital* data stored thereon, the medium comprising: a film; wherein portions of the film represent different optical density values representing the data; and wherein each level of optical density is associated with a symbol from a constellation of symbols, and wherein each symbol represents a plurality of bits of data."

The amendment with respect to claim 1 on which the decision under appeal was based is set in *italics*.

VII. The appellant's arguments may be summarised as follows:

The calibration patches 82 in D3 were not stored data. Instead they represented sensitometric information. Data stored on a medium was information which was stored for the purpose of being identically retrievable. The calibration patches 82 in D3 comprised information because they had unique latent exposure densities, but these latent exposure densities were not stored data. The calibration patches 82 were not exposed in order to be identically retrievable and were not identically retrievable. Quite to the contrary, they were provided because they would not yield identical optical densities on each film. In D3, only the symbols 78 of the barcode array 74 (which is also arranged in the reference calibration array 76) constituted data stored on the film. But D3 did not specify how the symbols 78 were related to the data they were intended to represent. If any bits were associated with the symbols 78, they would not be associated with the optical density of the symbols 78. Moreover, each pixel within a symbol 78 could only assume two states (black or white). Thus any bit value associated with the individual pixels could not represent a plurality of bits.

Thus, in the data recording portion of the film in D3, optical density levels were not associated with symbols from a constellation of symbols, each of which represented a plurality of bits of data.

VIII. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings. In this communication the board *inter alia* gave detailed reasons as to why it tended to agree with the finding in the decision under appeal that the

cartridge of claim 1 was not new with respect to the cartridge disclosed in D3.

IX. In a letter dated 2 January 2014 the appellant requested a decision according to the state of the file. The oral proceedings were subsequently cancelled. No reaction in substance to the board's communication is on file.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request: novelty (Article 54(1) EPC 1973)*
 - 2.1 D3 belongs to the state of the art (Article 54(2) EPC 1973) for the present application. It concerns the manufacturing of photosensitive films, for instance of the film format known as the Advanced Photographic System (see paragraphs [0001] and [0017]). The films take the form of film strips (70) and are put in cartridges (see paragraph [0014]).
 - 2.2 The film strip (70) has data stored thereon, namely bar code data symbols (78) arranged in a 2D barcode symbol array (74) of a frame of the film strip, see figure 2.
 - 2.3 Moreover, portions of the film (reference calibration patches 82) represent different optical density values (see paragraph [0020]).
 - 2.4 D3 also discloses that there may be a close relationship between the stored data (78) and the film portions representing different optical density values.

- 2.4.1 According to claims 16 and 21 of D3, the stored data correspond to correction factors indicating the offset between the actual optical density values of the reference calibration patches and their desired optical density values according to an established standard. This makes it possible to fully define the film characteristic already at the time of manufacture.
- 2.4.2 Thus the optical density value of each reference calibration patch represents the desired value thereof corrected by the offset value and consequently (because the desired value is a priori known) also represents the stored offset value.
- 2.5 Each reference calibration patch is associated with a 2D barcode symbol (which is a symbol storing correction factors for the calibration patch) from a constellation of symbols (namely the entirety of 2D barcode symbols stored). And each 2D barcode symbol represents a plurality of bits of data (such as the correction factor as stored in a memory, see claim 16 of D3).
- 2.6 Thus D3 discloses a cartridge having all the features specified in claim 1 of the main request. Therefore, the cartridge of claim 1 is not new (see Article 54(1) EPC 1973).
3. The appellant's arguments did not convince the board that the claimed cartridge is new. They are essentially based on the statement that "D3 does not specify how symbols 78 of barcode array are related to the data they are intended to represent". In view of claims 16 and 21 of D3, the board was not convinced by these arguments (see point 2.4.1 above).

4. *Auxiliary request: novelty (Article 54(1) EPC 1973)*

The feature in claim 1 of the auxiliary request that the stored data are digital data does not change the above assessment. Since each 2D barcode symbol represents a plurality of bits of data (such as the correction factors as stored in the memory, see claim 16 of D3), the stored data are digital data.

5. Since the subject-matter of claim 1 of both the main request and the auxiliary request is not new, the decision under appeal cannot be set aside. Thus the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated