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**Datasheet for the decision
of 28 February 2013**

Case Number: T 1483/10 - 3.2.03

Application Number: 05792098.5

Publication Number: 1795797

IPC: F21S 4/00

Language of the proceedings: EN

Title of invention:

LED LAMP

Applicant:

Chan, Sze Keun

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 14(2), 83, 123(2), 153(2)(5), 111(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Correction of translation"

"Remittal to the examining division"

Decisions cited:

T 0353/03, T 0700/05

Catchword:

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Case Number: T 1483/10 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 28 February 2013

Appellant: Chan, Sze Keun
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 February 2010
refusing European patent application
No. 05792098.5 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
K. Garnett

Summary of Facts and Submissions

- I. European Patent application no. EP05792098.5. was originally filed as International Patent Application PCT/CN2005/001562 on 26 September 2005 at the Chinese Patent Office in the Chinese language and published under WO 2006/034633 on 6 April 2006. Upon entry into the European phase an English language translation of the application was filed at the European Patent Office on 22 December 2006.
- II. The examining division refused the European application by a decision dated 16 February 2010. In its decision the examining division held that the subject-matter of claims 1 and 3 contravened Article 123(2) since the originally claimed feature "astigmatism plate" had been replaced by the feature "radiating plate". According to the division, the plate is a passive optical element and therefore cannot radiate light. Furthermore, in the division's view, the application did not meet the requirements of Article 83 EPC since it merely states that the astigmatism plate is made of colophony. However, in its view, this material is not suitable for shaping plates with holes for the LEDs since it is brittle and would also melt because of the heat generated by the LEDs.
- III. The applicant (hereinafter "the appellant") filed a notice of appeal against this decision on 16 April 2010 and paid the fee the same day. The grounds of appeal, dated 8 June 2010, were received on 15 June 2010.
- IV. In a communication dated 31 October 2012, pursuant to Article 15(1) RPBA annexed to the summons to oral

proceedings, the Board informed the appellant of its provisional opinion. In particular, the Board indicated that it is permissible under Article 14(2) EPC to correct translation errors provided clear evidence, for example in the form of a confirmation by a certified translator, is given.

- V. By letter of 17 January 2013 the appellant filed a certified English translation of the Chinese expression used for component (8), which had apparently been mistranslated in the published English language application. The appellant also responded to the other points raised in the board's communication and requested that the oral proceedings scheduled for 30 January 2013 be cancelled.
- VI. Following a telephone conversation with the rapporteur of the board on 21 January 2013 the appellant filed, by letter of the same day, a new main request comprising claims 1 to 6 and repeated its request for the oral proceedings to be cancelled. Also on the same day the appellant filed a corrected main request comprising claims 1 to 5.
- VII. In accordance with the appellant's request, the oral proceedings scheduled for 30 January 2013 were cancelled.
- VIII. The board understands the appellant's requests to be that the contested decision be set aside and a patent be granted on the basis of claims 1 to 5 of the corrected main request filed on 21 January 2013.

IX. Claim 1 of the corrected main request filed on 21 January 2013 reads:

"A LED lamp comprising:

- a lamp-lid (1),
- a metal lamp-cup (2),
- an insulating layer (6) for connecting a lamp-cap (7) and the metal lamp-cup (2), and
- LEDs (3),
- a PCB (Printed Circuit Board) (5) in the metal lamp-cup (2),

characterized in that

- the LED lamp comprises a light scattering plate (8) provided on the PCB (5),
- the light scattering plate (8) being made of transparent or sub-transparent material,
- the light scattering plate (8) having the same number of holes as that of the LEDs (3), the LEDs being installed in the holes,
- the electrical connections (31) of the LEDs being connected to the PCB (5),
- the inner surface of lamp-cup (2) being electroplated with reflecting film (21)
- the light-scattering plate (8) and LEDs being integrated in one entity."

X. The appellant's case can be summarised as follows:

Article 123(2)

The use of the term "astigmatism" was the result of a misunderstanding of the subject-matter by the translator and is not appropriate to reflect the real function of the plate 8. The correct translation of the

original Chinese should have read "light-scattering plate". A certified translation to this effect has been filed with letter of 17 January 2013.

Article 83 EPC

The objection raised with respect to the feature of an "astigmatism plate" no longer applies since it has been replaced by "light scattering plate". As regards the plate material, the assertion of the examining division that colophony is not a suitable material has no technical basis. Colophony is an easily moulded compound and is therefore suitable for the manufacture of the plate. Colophony is any case not specified in the claim.

Subtransparent means "imperfectly or partially transparent or semi-transparent" whereas "opaque" means "not clear" or hardly transmitting or reflecting light". These definitions are all compatible with the optical properties of colophony.

Reasons for the decision

1. The appeal is admissible.
2. *Article 123(2) EPC*
 - 2.1 Article 14(2) EPC allows for a European patent application to be filed in any language and then to be translated into one of the official languages.
Throughout the proceedings before the European Patent

Office, such translation may be brought into conformity with the application as filed.

2.2 According to Articles 153(2) EPC, an international application for which the European Patent Office is a designated or elected Office, shall be equivalent to a regular European application (Euro-PCT application). Under Article 153(5) EPC Euro-PCT applications shall be treated as European applications. It is also a general principle that such applications must be treated as favourably as those made in a contracting state (see T 700/05 Reasons - paragraph 4.1.1 also T 353/03). Hence, by analogy, Article 14(2) EPC must also allow the translation into English of a PCT application originally filed in Chinese to be brought into conformity with the original Chinese text of the application throughout the proceedings before European Patent Office.

2.3 The certified translation provided by the appellant with its letter of 17 January 2013 shows that the use of the term "astigmatism plate" was the result of a translation error and the correct term should have been "light-scattering plate". Accordingly, the replacement of the term "astigmatism plate" by "light scattering plate" in claim 1 is an allowable correction made under Article 14(2) EPC and does not infringe Article 123(2) EPC.

2.4 Claim 1 of the main request is based on claim 1 as originally filed with an additional feature defining that:

"the light-scattering plate (8) and LEDs being integrated in one entity"

This feature finds support in the English language translation of the originally filed application at page 2, lines 28 to 29 and page 3, lines 26 to 28.

2.5 The deletion of the feature defining that "said metal lamp-cup (2) is a lamp cup with larger area of metal", present in the original claim 1, also does not contravene Article 123(2) since a metal lamp-cup (2) has already been defined in the preamble and a further statement to the effect that it is made of a larger area of metal is redundant.

2.6 In conclusion, the subject-matter of claim 1 according to the main request meets the requirements of Article 123(2) EPC.

3. *Insufficiency of Disclosure, Article 83 EPC*

3.1 It follows that the objections raised in the contested decision with respect to the terms "astigmatism plate" and "radiating plate" no longer apply.

3.2 The examining division has provided no evidence to support its assertion that colophony is not a suitable material for forming the light scattering plate ("astigmatism plate" in the contested decision). Further, the arguments of the examining division are not convincing since LEDs generally generate little heat and even brittle materials can be provided with holes to receive them. In the circumstances, the Board therefore accepts the appellant's view that colophony

is a generally known mouldable compound which is suitable for the manufacture of the plate without the need for any further specific instruction.

3.3 A further objection as to lack of clarity was raised by the examining division against the term "subtransparent". In its view, interpretation of this term could stretch to include "opaque", thus creating a lack of clarity since an opaque plate would not transmit light. However, as indicated by the appellant, whilst perhaps not indicated in all dictionaries, subtransparent means "imperfectly or partially transparent or semi-transparent" (see for example Merriam-Webster online dictionary) whereas "opaque" means "not clear" or hardly transmitting or reflecting light". Hence, following from the correct understanding of this term as meaning semi-transparent, this objection is unfounded because the meaning is not only compatible with the optical properties of colophony but also with the light-scattering property of the plate.

3.4 Thus, the application meets the requirements of Articles 83 and 84 EPC.

4. Novelty and Inventive step.

4.1 Since the objections raised in the contested decision have been overcome by the appellant's amendments and the questions of novelty and inventive step were not dealt with by the examining division in its reasons, the Board considers it justified to exercise its discretion under Article 111(1) EPC to remit the case 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 with the order to continue examination on the basis of claims 1 to 5 of the corrected main request filed with letter of 21 January 2013.

Registrar:

Chairman:

C. Spira

U. Krause