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**Datasheet for the decision  
of 6 February 2018**

**Case Number:** T 1304/13 - 3.2.06

**Application Number:** 07851932.9

**Publication Number:** 2094121

**IPC:** A42B3/22, G02B5/23

**Language of the proceedings:** EN

**Title of invention:**

A VISOR PROVIDED WITH A UV-SENSITIVE MATERIAL

**Applicant:**

Pinlock Patent B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 123(2)

RPBA Art. 15(3)

**Keyword:**

Claims - clarity (no)

Amendments - added subject-matter (yes)

**Decisions cited:**

T 0150/82

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1304/13 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 6 February 2018**

**Appellant:** Pinlock Patent B.V.  
(Applicant) Zilverparkkade 135  
8232 Lelystad (NL)

**Representative:** Nederlandsch Octrooibureau  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 18 September  
2012 refusing European patent application No.  
07851932.9 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Hannam  
W. Ungler

## Summary of Facts and Submissions

- I. An appeal was filed by the applicant (appellant) against the decision of the examining division refusing European Patent Application No. 07851932.9.
- II. At oral proceedings before the examining division, the subject-matter of claim 1 of (then) auxiliary request 2 was found not to meet the requirements of Article 56 EPC and was subsequently withdrawn by the applicant. A Rule 71(3) EPC communication was issued by the examining division based on (then) auxiliary request 4 which it found to meet the requirements of the EPC. The applicant did not approve the proposed text for grant and requested that a patent be granted on the basis of auxiliary request 2 which had been discussed at oral proceedings and found to be not allowable. In its decision, the examining division confirmed its finding regarding auxiliary request 2 and refused the application.
- III. With its grounds of appeal, the appellant requested that a patent be granted according to a main request or, in the alternative, according to one of auxiliary requests 1 or 2.
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 of each of the requests seemingly lacked clarity (Article 84 EPC) and appeared not to meet the requirement of Article 123(2) EPC.
- V. With letter of 8 January 2018 the appellant filed new auxiliary requests 1A, 1B and 2A. It further indicated

that it would not attend the appointed oral proceedings.

VI. Oral proceedings were nonetheless held before the Board on 6 February 2018 in the absence of the appellant. The requests of the appellant taken from its written submissions were that the decision under appeal be set aside and a patent be granted on the basis of the main request filed with letter dated 18 January 2013, auxiliarily on the basis of one of auxiliary request 1A (filed with letter dated 8 January 2018), first auxiliary request (filed with letter dated 18 January 2013), auxiliary request 1B (filed with letter dated 8 January 2018), second auxiliary request (filed with letter dated 18 January 2013) and auxiliary request 2A (filed with letter dated 8 January 2018).

VII. Claim 1 of the main request reads as follows:

"A visor (1) comprising:

- at least one transparent plate (2), and
- pins (7-3, 7-4);
- a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases and which is kept space (sic) from the outer side (4) of the transparent plate (2) by a short distance by means of the pins (7-3, 7-4);
- an elastic element (8) provided round the pins (7-3, 7-4) which in compressed condition exerts a pressure on the plate (2) and the layer (6)."

Claim 1 of auxiliary request 1A reads as follows:

"A visor (1) comprising:

- a transparent plate (2), and

- pins (7-3, 7-4);
- a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases and which is kept spaced from the outer side (4) of the transparent plate (2) by means of the pins (7-3, 7-4);
- an elastic element (8) in the form of a ring provided round the pins (7-3, 7-4) which in compressed condition exerts a pressure on the plate (2) and the layer (6) to ensure water-tightness around the pins."

Claim 1 of the first auxiliary request reads as follows:

"A visor (1) comprising:

- at least one transparent plate (2), and
- pins (7-3, 7-4);
- a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases and which is kept spaced from the outer side (4) of the transparent plate (2) by a short distance by means of the pins (7-3, 7-4);
- an elastic element (8), configured as a dry, non-adhesive, flexible silicone seal which extends over the whole of the circumferential edges of the photosensitive layer (6) which in compressed condition exerts a pressure on the plate (2) and the layer (6), and prevents the plate (2) and the layer (6) from moving undesirably relative to each other under the influence of the wind when driving and prevents the ingress of air, water, moisture and dirt."

Claim 1 of auxiliary request 1B reads as follows:

"A visor (1) comprising:

- a transparent plate (2), and
- pins (7-3, 7-4);
- a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases and which is kept spaced from the outer side (4) of the transparent plate (2) by means of the pins (7-3, 7-4);
- an elastic element (8), which functions as a spacer between the transparent plate (2) and the photosensitive layer (6) and which is configured as a dry, non-adhesive, flexible silicone seal which extends over the whole of the circumferential edges of the photosensitive layer (6) which in compressed condition exerts a pressure on the plate (2) and the layer (6), and prevents the plate (2) and the layer (6) from moving relative to each other under the influence of the wind when driving and prevents the ingress of air, water, moisture and dirt."

Claim 1 of the second auxiliary request reads as follows:

"A visor (1) comprising:  
at least one transparent plate (2)  
a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases,  
characterised in that said plate (2) is provided with an extension (9) and the layer (6) is detachably provided on the extension (9) and that the visor (1) comprises a silicone seal element which forms a practically cured silicone seal, which maintains a certain spacing between the plate (2) and the layer (6), also when the wind exerts a pressure force on the layer (6) when driving, and said element (8) prevents the plate (2) and the layer (6) from flapping and

beating together, so that there will be no damage and/or wear."

Claim 1 of auxiliary request 2A reads as follows:

"A visor (1) comprising:  
a transparent plate (2)  
a layer (6) of photosensitive material which has the property of transmitting less light as the amount of light incident thereon increases,  
characterised in that said plate (2) is provided with an extension (9) according to Figure 3B and the layer (6) is detachably provided on the extension (9) and that the visor (1) comprises a dry, non-adhesive, flexible silicone sealing element, which maintains a spacing between the plate (2) and the layer (6), also when the wind exerts a pressure force on the layer (6) when driving, and said element (8) prevents the plate (2) and the layer (6) from flapping and beating together, so that there will be no damage and/or wear."

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

Regarding auxiliary request 1A, and in response to the preliminary opinion, claim 1 had been amended to refer to only a single transparent plate. Wording from page 7, lines 6 to 8 had also been added to reflect the water-tightness around the pins.

In auxiliary request 1B, claim 1 had also been amended to refer to only a single transparent plate. The function of the elastic element as a spacer taken from page 7, line 9 had also been included in the claim.

In auxiliary request 2A, and in response to the clarity and added matter objections in the preliminary opinion,



claim 1 had been amended to refer to Figure 3B which limited the claim to the specific illustrated form of extension, this being in line with the Guidelines F-IV, 4.17 and T150/82.

## **Reasons for the Decision**

### 1. *Main request*

The subject-matter of claim 1 does not meet the requirements of Article 84 and Article 123(2) EPC.

1.1 In point 1.1 of its preliminary opinion, the Board identified a lack of clarity in claim 1 due to the inclusion of the expression 'a short distance'. In point 1.2, it also questioned the compliance of the subject-matter of claim 1 with Article 123(2) EPC in respect of firstly the Fig. 3A embodiment disclosing just a single transparent plate and secondly the additional features on page 7, lines 18 to 26 relating to the Fig. 3A embodiment not being included in claim 1.

1.2 As regards the expression 'a short distance', it is unclear what distance a 'short' distance is, this being an unspecific, relative term. As regards compliance with Article 123(2) EPC, claim 1 includes features taken from an embodiment which is shown in Fig. 3A and described on page 7, lines 1 to 26 of the application as filed. On page 7, lines 18 to 26 of the application (as also mentioned explicitly in the Board's communication), this embodiment is disclosed as having separable pins which make it possible to detach the layer from the plate. There is no suggestion that this feature is optional or merely preferred in the

embodiment; the omission of this feature thus means that the subject-matter of claim 1 extends beyond the content of the application as filed. Further, the claim defines a 'visor comprising at least one transparent plate' which does not correspond to what is disclosed in the embodiment of Fig. 3A, in which the visor consists of just a single transparent plate (see also the further explanation given below in item 2.1). The definition in claim 1 thus results in subject-matter which extends beyond the content of the application as filed contrary to the requirement of Article 123(2) EPC.

1.3 In response to the Board's preliminary opinion, the appellant submitted no arguments. Regarding this request, the Board thus sees no reason to alter its preliminary opinion, this being confirmed herewith.

1.4 The main request is thus not allowable.

2. *Auxiliary request 1A*

The subject-matter of claim 1 does not meet the requirements of Article 123(2) EPC.

2.1 As regards the objection in point 1.2 of the Board's preliminary opinion that 'the passages on page 7 seemingly relate to just a single transparent plate' such that there was no basis in the application as filed for claiming 'at least one transparent plate', the amendment in the present claim 1 does not overcome this objection. The claimed visor is now defined as 'comprising a transparent plate' which is not limited to the disclosure of the Fig. 3A embodiment of just a single transparent plate, rather the claim still includes more than a single transparent plate within

its scope. In its letter of 8 January 2018 the appellant argues that the claim has been amended 'to refer only to a single transparent plate' yet this is not reflected in the wording 'comprising a transparent plate' in claim 1. The subject-matter of claim 1 thus does not comply with the requirement of Article 123(2) EPC.

2.2 In its preliminary opinion with regard to claim 1 of the main request on the issue of Article 123(2) EPC, the Board also indicated that the features on page 7, lines 18 to 26 detailed the specific embodiment of Fig. 3A and were seemingly disclosed in combination with those features of the Fig. 3A embodiment included in claim 1. Page 7, lines 18 to 22 specifically discloses 'separable pins' in the Fig. 3A embodiment making it 'possible to detach the layer 6 from the plate 2'. As already indicated in point 1.2 above, these separable pins are not disclosed as optional features of this embodiment. Neither has the appellant argued why the separable pins may be omitted from claim 1 when this is based upon the disclosure in the description of the Fig. 3A embodiment. The appellant's reference to page 7, lines 6 to 8 and the inclusion in claim 1 of features relating to achieving water-tightness around the pins does not overcome the objection related to the above identified omission. The Board thus finds the omission of the separable pins from claim 1 to not comply with the requirement of Article 123(2) EPC.

2.3 The Board also notes that Fig. 3A discloses a very specific embodiment of the visor, yet claim 1 has been formulated as 'a visor comprising' which encompasses a much broader scope including any number of additional features also being included in the claimed visor; this is not disclosed in relation to the Fig. 3A embodiment

on which the amended claim 1 is alleged to be based. In this regard it is also noted that Fig. 3A itself does not unambiguously disclose the 'elastic element 8 in the form of a ring provided round the pins', the Figure rather appearing to disclose the elastic element solely on one side of the pins which creates ambiguity as to the intended location of the elastic element 8. For these reasons the subject-matter of claim 1 also does not comply with the requirement of Article 123(2) EPC.

2.4 In the final paragraph of its letter of 8 January 2018, the appellant indicates its readiness to continue the procedure in writing if a request 'has minor issues outstanding'. As indicated in points 2.1 to 2.3 above, the outstanding objections under Article 123(2) EPC are extensive and wide ranging such that these are not regarded as minor issues which should be further addressed in writing, particularly when the appellant has not availed itself of the opportunity to attend the appointed oral proceedings. It is anyway stated in Article 15(3) of the Rules of Procedure of the Boards of Appeal 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', which reflects precisely the situation here.

2.5 Auxiliary request 1A is thus not allowable.

3. *First auxiliary request*

Claim 1 does not meet the requirements of Article 84 EPC.

3.1 In point 2.2 of its preliminary opinion, the Board addressed the issue of clarity of the expressions 'short distance' and 'moving undesirably'. In this regard it is unclear what distance a 'short' distance is, this being an unspecific, relative term, and it is also unclear when any moving can be characterised as 'undesirable'. In response to the objections in the preliminary opinion the appellant submitted no counter-arguments, so that the Board sees no reason to alter its preliminary opinion. The opinion of lack of clarity is therefore confirmed herewith.

3.2 The first auxiliary request is thus not allowable.

4. *Auxiliary request 1B*

The subject-matter of claim 1 does not meet the requirements of Article 123(2) EPC.

4.1 In claim 1 the visor is now defined as 'comprising a transparent plate'. As also found with respect to claim 1 of auxiliary request 1A above, such a visor is not limited to the disclosure of the Fig. 3A embodiment of just a single transparent plate, rather the claim still includes more than a single transparent plate in its scope. Thus, as also found in this regard with respect to claim 1 of auxiliary request 1A, the subject-matter of claim 1 of the present request does not comply with the requirement of Article 123(2) EPC.

4.2 According to the appellant, the subject-matter of claim 1 of this request has its basis in the Fig. 3A embodiment of the visor. As also found with respect to claim 1 of auxiliary request 1A (see point 2.2 above), such a visor is disclosed in combination with the features of page 7, lines 18 to 26 of the application

as filed, which includes 'separable pins' making it 'possible to detach the layer 6 from the plate 2'. These separable pins are not disclosed as optional features of this embodiment; neither has the appellant argued why the separable pins may be omitted from claim 1 when this is based upon the disclosure in the description of the Fig. 3A embodiment. The Board thus finds the omission of the separable pins from claim 1 to not comply with the requirement of Article 123(2) EPC.

4.3 Auxiliary request 1B is thus not allowable.

5. *Second auxiliary request*

Claim 1 does not meet the requirements of Article 84 EPC.

5.1 Even though this request corresponds to that found by the examining division to meet the requirements of the EPC, in point 3 of its preliminary opinion the Board indicated *inter alia* that the expressions 'practically cured' and 'certain spacing' lacked clarity. In regard to the former, the Board noted that the 'extent of curing' implied by the expression 'practically cured' was not apparent. No information is available to allow the skilled person to know what degree of curing of the silicone seal is required for it to be considered 'practically cured'. To these objections the appellant provided no arguments such that the Board sees no reason to alter its preliminary opinion, and confirms the same herewith.

5.2 The second auxiliary request is thus not allowable.

6. *Auxiliary request 2A*

The subject-matter of claim 1 does not meet the requirements of Article 84 and Article 123(2) EPC.

- 6.1 Claim 1 includes the feature that 'said plate is provided with an extension according to Figure 3B'. According to Rule 43(6) EPC, 'except where absolutely necessary, claims shall not rely on references to the description or drawings in specifying the technical features of the invention.' The appellant has failed in its letter of 8 January 2018 to indicate why such an inclusion of a reference to Figure 3B is 'absolutely necessary', a sole reference being made to the clarity and added matter objections of the Board without indicating how these make the reference absolutely necessary. Albeit that the Board is anyway not bound by the Guidelines for Examination, the appellant's reference to the Guidelines F-IV, 4.17 and T150/82 does not alter the Board's finding since here it is stated that 'the onus is upon the applicant to show that it is absolutely necessary to rely on reference to the description or drawings' which, as indicated above, has not been done. Moreover, reference to the Figure itself, even if the shape could be regarded as such a peculiar shape that it cannot be defined in words, does not assist the appellant since the shape shown in Fig. 3B is shown from above only (possibly in cross-section although no hatching has been used), so that it is anyway not clear what shape the extension has. Although the Board had stated in its preliminary opinion (see point 3) that it was for example not clear in which direction the plate extended without reference to the specific embodiment in Fig. 3B, this did not state or

imply that the claim should include a reference to Fig. 3B. Thus, as a consequence, the reference to Figure 3B in claim 1 is not an exception to the requirement of Rule 43(6) EPC, such that this requirement is not fulfilled. Since the shape of the extension is anyway not clear from Fig. 3B, claim 1 also lacks clarity (Article 84 EPC).

6.2 As regards compliance with Article 123(2) EPC, claim 1 has been amended, as also the case in auxiliary requests 1A and 1B, so that the claimed visor 'comprises a transparent plate'. As found for auxiliary requests 1A and 1B (see points 2.1 and 4.1 above), this wording is not limited to just a single transparent plate, which is the only disclosure in the Figure 3A embodiment, such that the subject-matter of claim 1 extends beyond the content of the application as filed.

6.3 Auxiliary request 2A is thus not allowable.



**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated