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**Datasheet for the decision  
of 25 February 2014**

**Case Number:** T 1857/13 - 3.2.07

**Application Number:** 07732709.6

**Publication Number:** 2027037

**IPC:** B65D55/02

**Language of the proceedings:** EN

**Title of invention:**

TAMPER INDICATOR DEVICE

**Applicant:**

Talos Industries Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

Amendments - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 1857/13 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 25 February 2014**

**Appellant:** Talos Industries Limited  
(Applicant) 29 Wood Street  
Stratford upon Avon  
Warwickshire CV37 6JG (GB)

**Representative:** Parnham, Kevin  
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29 Wood Street  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 20 February  
2013 refusing European patent application No.  
07732709.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** H. Hahn  
O. Loizou

## Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 07 732 709.6.
  
- II. The following documents of the examination proceedings are quoted in the present decision:  
  
D1 = US-A-5 882 116  
D2 = WO-A-2004/063047  
D3 = US-B-6 179 139
  
- III. The Examining Division decided at the oral proceedings of 24 January 2013 that claims 1 and 10 of the main request filed at these oral proceedings contravened Article 84 EPC. It further considered that the subject-matter of claim 10 lacks novelty over the specific embodiments of the disclosures of each of D1, D2 and D3. Consequently, the application was refused.
  
- IV. With its statement of grounds of appeal the appellant requested that the decision be set aside and a patent be granted on the basis of the claims 1-15 of the main request as submitted together with the statement of grounds of appeal, alternatively that the decision be set aside on the basis of this main request and the application be remitted to the Examining Division for further prosecution. In case the Board intended to confirm the decision to refuse the application, oral proceedings were requested.
  
- V. With a communication dated 21 November 2013 and annexed to summons for oral proceedings the Board presented its preliminary and non-binding opinion with respect to the claims 1-15 of the single request.

The Board stated amongst others that independent claims 1 and 9 appeared to contravene Articles 84 and 123(2) EPC and claims 1 and 9 and 10-15 appeared not to comply with Rule 43(2) EPC.

- VI. With letter dated 14 **January** [sic] 2014 submitted by fax on 15 February 2014 the appellant submitted claims 1-7 of a new main request and claims 1-17 of new first and second auxiliary requests in combination with very brief comments concerning the basis of the amendments made in claims 1.

This letter did **not** contain any arguments how the claims of these three new requests would overcome the objections raised in the above mentioned Board's communication.

- VII. With a letter dated 17 February 2014 submitted by fax on the same date the appellant then submitted complete sets of claims 1-17 of the new main, first and second auxiliary requests accompanied by essentially identical comments as in the previous letter.

- VIII. Oral proceedings before the Board were held on 25 February 2014. To start with, the issue of Article 123(2) EPC was discussed with respect to claims 1, 10 and 11 of the main, first and second auxiliary requests filed by fax on 17 February 2014. As a result of this discussion the appellant replaced all three previous requests by a single main request of which claim 1 was then further discussed with respect to its compliance with Article 123(2) EPC.

The appellant requested to set aside the decision under appeal and to grant a patent on the basis of the claims of the main request filed during the oral proceedings.

At the end of the oral proceedings the Board announced its decision.

IX. Independent claim 1 of the main request filed at the oral proceedings reads as follows:

"1. A reusable indicator device for engagement with an item, such device comprising at least two substantially parallel members with a first visible mark when in contact with one another under or after pressure, the device including means for causing relative movement of the parallel members whereby at least a portion of the first visible mark is deleted and the at least two substantially parallel members thereafter have a second visible mark when again in contact with one another under or after pressure to replace the said at least portion of the first visible mark to allow re-use of the device."

X. The appellant argued, insofar as relevant for the present decision, essentially as follows:

The (first) visible mark is a combination of pressurized and non-pressurized areas, such as for example a printed name or date. This first visible mark is then, at least in part, deleted or erased by relative movement of the two substantially parallel members (see page 13, lines 16 to 25 of the application as originally filed corresponding to the published WO-A-2007/129086). The second visible mark is then created at the same location as the (deleted part of the) first visible mark by applying pressure to bring the two

parallel members again into contact with one another (see the published original application WO-A-2007/129086; page 8, lines 10 to 14; page 18, lines 14 to 16; page 22, lines 8 to 17). The embodiment described at page 19, lines 2 to 21 of the WO-A-2007/129086 and depicted in figure 14 can serve as a basis for the amendment that at least a portion of the first visible mark 22 - represented by the signature according to reference sign 22 - is replaced by a second visible mark 22, i.e. the second visible mark is created at the same location as the first mark by applying pressure to the surface of the first parallel member.

Claim 1 therefore complies with the requirements of Article 123(2) EPC.

### **Reasons for the Decision**

1. *Admissibility of the new main request (Articles 12(1), 12(2) and 13(1) RPBA)*

Since the Board considers that the subject-matter of claim 1 of the new main request does not comply with the requirements of Article 123(2) EPC (see point 2 below) there is no need to consider in this decision the issue of admissibility of this request - which was filed as late as the oral proceedings before the Board (see point VIII above) - with respect to Articles 12(1), 12(2) and 13(1) RPBA.

2. *Admissibility of the amendments made in claim 1 (Article 123(2) EPC)*

- 2.1 Claim 1 of the single request contains the features **"at least a portion of the first visible mark is deleted**

and the at least two substantially parallel members thereafter have **a second visible mark** when again in contact with one another under or after pressure **to replace the said at least portion of the first visible mark**" (emphasis added by the Board) which have **no** explicit basis in the application as originally filed (corresponding to the published WO-A-2007/129086 which is used for the following quotations) and which also **cannot** be directly and unambiguously derived therefrom as required by the established case law in order to comply with Article 123(2) EPC (see Case Law of the Boards of Appeal, 7<sup>th</sup> edition 2013, chapter II.E.1.7).

2.2 WO-A-2007/129086 only discloses that a visible mark is created in that area of the first parallel member to which pressure was applied (see page 13, lines 16 to 20) and that relative movement between the first and second parallel members results in partial or complete erasure of this visible mark (see page 13, lines 20 to 25).

Since the described indicator devices are intended for reuse the WO-A-2007/129086 additionally discloses that after erasure of said (first) visible mark further or new visible marks can be created (see e.g. page 8, lines 8 to 15; page 18, lines 14 to 16; page 19, lines 18 to 21; page 22, lines 8 to 11). These further or new visible marks can be considered to be second visible marks.

There exists, however, no disclosure whatsoever that a second visible mark created by applying pressure to the first parallel member **replaces** either the erased or deleted portion of the first visible mark or the complete erased or deleted first visible mark (as in "being identical"), let alone that the second visible

mark is created at (exactly) the **same location** as the first visible mark had been created, as argued by the appellant. WO-A-2007/129086 is absolutely silent in this respect.

2.3 The appellant's arguments to the contrary cannot hold for the following reasons.

2.3.1 The embodiment according to figure 14 does **not** provide a basis for the features in question (see point 2.1 above) since the erasure of the visible mark 22 according to the specific embodiment of a reusable indicator device as shown in figure 14 and particularly described at page 19, lines 2 to 21, is stated to occur by a sliding action produced by the opening of the container 20. The housing 42 of container 20 is provided with an aperture through which second parallel member 14 can freely slide while first parallel member 12 is attached to the inside of the upper surface of housing 42 (see page 18, line 25 to page 19, line 2). As shown in figure 14, when the container is in a closed position, the second parallel member 14 assumes a particular position relative to the first parallel member 12, so that the application of pressure to the surface of the first parallel member 12 through aperture 30 in container 20 results in the creation of a visible mark 22 on the surface of the first parallel member (see page 19, lines 2 to 7).

2.3.2 Figure 14, mentioned in this context, shows in the area of the aperture 30 the four numerals "7456" besides something which could be considered to represent a signature, the latter being connected via a line with the reference sign 22. The Board disagrees that only said signature, as argued by the appellant, represents the first visible mark. To the contrary, it is more



plausible that also said four numerals likewise form part of this visible mark 22 which will be erased or deleted by movement of the second parallel member with respect to the first parallel member.

- 2.3.3 During the movement from a closed to an open configuration, the second parallel member 14 is moved in housing 42 of container 20. Since the first parallel member 12 is held stationary this movement of second parallel member 14 results in erasure of the visible mark from the surface of the first parallel member 12 as the contact points between first and second parallel members have become displaced (see page 19, lines 9 to 16).

This can only result in a **complete erasure** of the first visible mark - and not only of a portion thereof - since all contact points between the first and second parallel members, established by the previous application of pressure, have become displaced due to said sliding movement.

From the Board's view this conclusion is supported by figure 16 which shows the container 20 with the two parallel members 12, 14 and the area within said aperture 30 in the open configuration of the container (see page 11, lines 24 and 25). This figure shows that the number "7456" as well as the signature have been erased from the surface of the first parallel member 12.

WO-A-2007/129086, as a consequence, does not disclose how only a portion of this first mark can be erased/ deleted.

2.3.4 The specific indicator device of this embodiment according to figure 14 then can be re-used by slipping back the second parallel member 14 through the slot in housing 42 of container 20 to its original position and pressure can be applied to the surface of first parallel member 12 through aperture 30 of container 20 to produce a **further** visible mark 22 (see page 19, lines 18 to 21).

WO-A-2007/129086, however, does not disclose how it is technically achieved that this further visible mark is produced **at the same location** as the first visible mark.

The above description of the embodiment according to figure 14 shows that a further visible mark (= a second visible mark) can be created **anywhere** within the area of said aperture 30.

2.4 With regard to the above, the Board concludes that the subject-matter of claim 1 of the main request contravenes Article 123(2) EPC.

Consequently, the single main request is not allowable.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated