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**Datasheet for the decision
of 11 October 2018**

Case Number: T 2370/13 - 3.4.03

Application Number: 10013691.0

Publication Number: 2287830

IPC: G09G3/34

Language of the proceedings: EN

Title of invention:

Liquid crystal display apparatus

Applicant:

Samsung Display Co., Ltd.

Headword:

Relevant legal provisions:

EPC 1973 Art. 56, 84

RPBA Art. 13(1), 15(3), 15(6)

Keyword:

Late-filed requests - admitted (no)

Decisions cited:

T 1587/07

Catchword:



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Case Number: T 2370/13 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 11 October 2018

Appellant: Samsung Display Co., Ltd.
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Gyeonggi-do (KR)

Representative: Dr. Weitzel & Partner
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 8 July 2013
refusing European patent application No.
10013691.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: T. M. Häusser
G. Decker

Summary of Facts and Submissions

I. The appeal concerns the decision of the examining division refusing the European patent application No. 10 013 691 for lack of clarity (Article 84 EPC 1973) and lack of novelty and inventive step (Article 52(1) EPC and Articles 54(1) and 56 EPC 1973) in relation to the main request as then on file. The former first auxiliary request was not admitted into the proceedings by the examining division (Rule 137(3) EPC).

II. Oral proceedings took place before the board in the absence of the appellant, of which the board had been informed beforehand.

In writing the appellant had requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, the claims of the first or second auxiliary request, all requests filed with the letter dated 11 September 2018.

III. The wording of claims 1 and 2 of the main request and of the first and second auxiliary requests is as follows (board's labelling "(i)", "(i)'", "(ii)", "(iii)", and "(iv)"):

Main request:

"1. A liquid crystal display (LCD) apparatus displaying a color image of a frame by dividing the frame into a plurality of periods in which different colors are displayed, the LCD apparatus comprising:

an LCD panel (140) including a plurality of gate lines (GL) and a plurality of data lines (DL) crossing the plurality of gate lines (GL); and

a backlight unit (150) including a plurality of light-emitting units (252), the light-emitting units (252) being located under the LCD panel (140) and providing light to the LCD panel (140), each of the light-emitting units (252) includes a plurality of light-emitting elements (253) generating different colors in each of the periods, light-emitting units (252) closer to the edge of the LCD panel (140) including more light-emitting elements (253) than more centrally located light-emitting units (252),

wherein a first light-emitting unit and an n-th light-emitting unit located at the outermost edge portion of the backlight unit (150) include more light-emitting elements (253) than second to (n-1)-th light-emitting units located at a more central portion of the backlight unit (150) such that the amount of the light generated from the first and n-th light-emitting units is increased in comparison with the second to (n-1)-th light-emitting units,

wherein each of the light-emitting elements (253) include a red light-emitting diode (253a) generating red light, a green light-emitting diode (253b) generating green light and a blue light-emitting diode (253c) generating blue light,

(i) wherein the light-emitting units (252) are located along the gate lines (GL) such that the light-emitting units (252) are spaced apart from each other by a uniform interval, and

(ii) wherein each of the light-emitting units (252) generates light having different colors during a same time by a predetermined time interval in one frame."

"2. The LCD apparatus of claim 1, wherein the frame is divided into three periods and the light-emitting unit sequentially generates the red light in a first period,

the green light in a second period and the blue light in a third period."

First auxiliary request:

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that feature (i) is replaced by feature (i)' indicated below, in that ", and" replaces the full stop and in comprising the additional feature (iii) indicated below:

(i)' "wherein the light-emitting units (252) having same dimensions are located along the gate lines (GL) such that the light-emitting units (252) are spaced apart from each other by a uniform interval,"

(iii) "wherein there are eight light-emitting units (252)."

Claim 2 of the first auxiliary request is identical to claim 2 of the main request.

Second auxiliary request:

Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that "and" after feature (ii) is deleted, ", and" replaces the full stop and in comprising the following additional feature:

(iv) "wherein the number of light-emitting elements (253) increases with distance from the center portion of the LCD panel (140) to the edge portion thereof."

Claim 2 of the second auxiliary request is identical to claim 2 of the main request.

Reasons for the Decision

1. Oral proceedings before the board
 - 1.1 As announced in advance, the duly summoned appellant did not attend the oral proceedings. In accordance with Rule 71(2) EPC 1973 the proceedings were continued without the appellant.
 - 1.2 According to Article 15(3) and (6) RPBA, 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" and "ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary."

Indeed, the purpose of oral proceedings is to give the party the opportunity to present its case and to be heard. However, a party gives up that opportunity if it does not attend the oral proceedings.

In the present case, the main request and the first and second auxiliary request were filed with the letter dated 11 September 2018, i. e. after the oral proceedings before the board had been arranged. Under such circumstances the appellant had to expect a discussion on the admission of these newly filed requests during the oral proceedings, in particular because explicit reference had been made to Article 13 RPBA in the board's communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings. By not attending the oral proceedings the appellant gave up the opportunity to present its case as to why

the requests should be admitted into the appeal proceedings and could thus be treated as relying only on its written submissions in this respect (see T 1587/07, points 2.1 and 2.2 of the Reasons).

The board's decision in relation to the admission of the newly filed requests (see point 2 below) is therefore in conformity with the requirements of Article 113(1) EPC 1973 that the decisions of the EPO may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

Consequently, the case was ready for decision at the conclusion of the oral proceedings.

2. Admission of the main request and the first and second auxiliary requests
 - 2.1 The main request and the first and second auxiliary requests were filed one month before the date of the oral proceedings before the board. They constitute therefore an amendment to the appellant's case after it has filed its grounds of appeal and may be admitted into the proceedings and considered at the board's discretion (Article 13(1) RPBA).
 - 2.2 In accordance with established case law, late-filed requests are inadmissible if - *prima facie* - they do not overcome the outstanding objections under the EPC or give rise to new objections (*Case Law of the Boards of Appeal of the EPO*, 8th edition 2016, sections IV.E.4.4.1 and 4.4.2).
 - 2.3 In the present case the board had stated in the communication under Article 15(1) RPBA its provisional opin-

ion that claim 1 of the main request as then on file extended beyond the application as filed contrary to the provisions of Article 123(2) EPC and that the subject-matter of that claim did not involve an inventive step (Article 56 EPC 1973).

- 2.4 Apart from minor amendments addressing the board's objections under Article 123(2) EPC, claim 1 of the main request differs from claim 1 of the previous main request essentially in that feature (ii) was added.

In its letter dated 11 September 2018 the appellant merely asserted that feature (ii) was clear, without any indication how it should be understood. However, the wording of additional feature (ii) appears to imply that light having different colors is generated *simultaneously*, which is in apparent contradiction to the indications in dependent claim 2, according to which light having different colors (namely red, green and blue light) is *sequentially* generated. Moreover, the relation between the "predetermined time interval in one frame" defined in feature (ii) and the "plurality of periods" of one frame, defined previously in the claim, appears unclear. Therefore - *prima facie* - the addition of feature (ii) in claim 1 of the main request gives rise to new objections under Article 84 EPC 1973.

Moreover, the appellant did not indicate how the subject-matter of feature (ii) contributed to solving the stated technical problem of improving the uniformity of luminance across the LCD panel or what other object might be achieved by it. Given its apparently unclear formulation this is not evident to the board, either. If - on the other hand - feature (ii) were supposed to mean that the periods dividing the frames were the same for all light-emitting units, it would merely define a

standard setting which the skilled person would select by default. *Prima facie* the board is thus of the opinion that the incorporation of feature (ii) in claim 1 of the main request does not contribute anything towards overcoming the objection in relation to a lack of inventive step.

- 2.5 Claim 1 of the first auxiliary request and claim 1 of the second auxiliary request also comprise feature (ii) while claim 2 of these requests is identical to claim 2 of the main request. Hence, the reasoning mentioned under point 2.4 above also applies to the first and second auxiliary requests.

Moreover, the amendments effected in relation to claim 1 of the first and second auxiliary requests give rise to further objections under Article 84 EPC 1973, as it appears unclear what is meant by the "dimension" of a light-emitting unit (feature (i)') and how the "number" of light-emitting elements (feature (iv)) is to be determined. The technical effect of the subject-matter of these amendments is not evident to the board, either. Finally, the subject-matter of additional feature (iii) appears trivial. Hence - *prima facie* - the amendments effected in relation to claim 1 of the first and second auxiliary requests are not suitable for overcoming the objection of lack of inventive step, either.

- 2.6 In view of the above, the main request and the first and second auxiliary requests are not admitted into the appeal proceedings (Article 13(1) RPBA).

3. Conclusion

The appellant stated in the letter dated 11 September 2018 that the previously filed claim requests were withdrawn. As the board does not admit the main request and the first and second auxiliary requests into the appeal proceedings, there is no admissible request on file. Consequently, the appeal is to be dismissed (Article 111(1) EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated