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

Case Number: T 0008/14 - 3.4.02

Application Number: 04796886.2

Publication Number: 1702232

IPC: G02C7/02, G02C13/00, A61B3/10,
B24B13/00

Language of the proceedings: EN

Title of invention:
SYSTEM FOR MANUFACTURING AN OPTICAL LENS

Applicant:
Essilor International

Headword:

Relevant legal provisions:
EPC 1973 Art. 54(1)

Keyword:
Novelty - (no)

Decisions cited:

Catchword:



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Case Number: T 0008/14 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 11 September 2018

Appellant: Essilor International
(Applicant) 147, rue de Paris
94220 Charenton-le-Pont (FR)

Representative: V.O.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 June 2013
refusing European patent application No.
04796886.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: C. Kallinger
T. Karamanli

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the examining division refusing European patent application No. 04 796 886.2 on the basis of Article 97(2) EPC because the claims of the then sole request did not fulfil the requirements of Articles 123(2), 84, 52, 54 and 56 EPC.
- II. With the statement setting out the grounds of appeal, the appellant requested that the decision of the examining division be set aside and a patent be granted on the basis of the claims underlying the appealed decision and, auxiliary, on the basis of the set of claims according to the auxiliary request filed with the statement setting out the grounds of appeal.
- III. By communication dated 29 June 2018, the board summoned the appellant to attend oral proceedings on 11 September 2018 and provided its provisional opinion on the merits of the appeal.
- IV. With letter dated 9 August 2018 the appellant filed a sole (main) request with an amended set of claims.
- V. Oral proceedings were held before the board on 11 September 2018. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the sole request filed with the letter dated 9 August 2018. At the end of the oral proceedings the chairman announced the decision of the board.

VI. Reference is made to the following document:
D7: EP 1 262 815 A2.

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

*" 1. A method of manufacturing an optical element for providing vision correction, the element customized to account for optical aberrations in a patient's eye, the element comprising a corrective lens having a lens definition, the method comprising:
measuring a wavefront of a patient's eye, the measurement including both low and high order aberrations in the patient's eye,
applying a metric that takes into account the wavefront measurement of the patient's eye, the metric being applied to determine the lens definition, and
fabricating an optical element based on the lens definition,
wherein the lens definition includes a prescription in terms of sphere, cylinder and axis."*

Reasons for the Decision

1. The appeal is admissible.

2. Amendments

Claim 1 is based on the following passages of the originally filed application documents and meets the requirements of Article 123(2) EPC:

- claims 1, 11 and 47
- paragraphs [0007] to [0008] and [0031] to [0035]
- figure 1

3. Novelty

3.1 The subject-matter of claim 1 lacks novelty with respect to the disclosure of D7 (Article 54(1) and (2) EPC 1973).

Document D7 discloses (see abstract and figures 1 and 2) a method of manufacturing an optical element for providing vision correction, the element being customized to account for optical aberrations in a patient's eye (see abstract and paragraphs [0013] and [0030]), the element comprising a corrective lens (14) having a lens definition (see paragraph [0027]), the method comprising:

- measuring a wavefront of a patient's eye, the measurement including both low and high order aberrations in the patient's eye (see paragraphs [0013] and [0038]),
- applying a metric that takes into account the wavefront measurement of the patient's eye, the metric being applied to determine the lens definition (see paragraphs [0022] to [0027], [0030] and [0038]), and
- fabricating an optical element based on the lens definition (see claim 1: "providing a correction lens").

This was not contested by the appellant.

Document D7 further discloses that the lens definition includes a prescription in terms of sphere and cylinder (see paragraph [0027] ii.). A lens prescription which is based on the specification of a cylinder necessarily has to provide the axis of the cylinder, too. Therefore, the lens definition disclosed in D7 implicitly also discloses axis as part of the lens

definition. This was also not contested by the appellant.

3.2 Appellant's argument in support of novelty

The appellant argued with reference to D7, paragraph [0027], section ii., that the subject-matter of claim 1 was novel because D7 disclosed a lens with two surfaces, where one was defined by sphere, cylinder (and axis) and the other by any X-Y-Z defined surface.

The board acknowledges that D7, in order to correct also for high order aberrations, discloses a lens definition going beyond the mere indication of sphere, cylinder and axis but also defining a "freeform" surface in terms of an X-Y-Z coordinates for a second lens surface. However, the board notes that the subject-matter of claim 1 does not differentiate between different lens surfaces and does not restrict the lens definition to the indication of sphere, cylinder and axis only. Therefore, the subject-matter of claim 1 is not novel with respect to the disclosure of D7.

4. In view of the above, the appellant's sole request is not allowable. Hence, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Kiehl

R. Bekkering

Decision electronically authenticated